

EQE 2023 reference (3a):

EPO and PCT, part 1

**EPO as PCT authority
Euro-PCT
EPO-WIPO Agreement**

(status 31.10.2022 for EQE2023)

DELTAPATENTS

Contents

- Euro-PCT Guide (1 January 2022)
- EPO-WIPO Agreement (consolidated)
 - Consolidated version of OJ 2017, A117 + updates:
 - OJ 2018, A24: Annex A(ii) per 1/4/2018 (BE deleted as BE no longer rO)
 - OJ 2020, A35: Annex D, Part I & II – Fees & Refunds per 1/4/2020” (esp. D, Part.II(4))
 - OJ 2020, A68: Annex D, Part I – Fees per 1/7/2020” (added fee Rule 40bis jo R.20.5bis)
 - OJ 2022, A37: Annex D, part I – Fees per 1/4/2022
- EP entry form (form 1200)
- Notes on the EP entry form
- EPO Form 1201 - Invitation EP entry
- EPO Form 1205 - Loss of rights after missing 31m period for EP entry
- Notice from the EPO dd 21 February 2013 concerning the request for early processing (early entry) - OJ 2013, 156

Note: the GL/PCT-EPO are in a separate document “EQE 2023 reference (3b): EPO and PCT, part 2”.

Status: 31 October 2022 (for EQE 2023)

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Euro-PCT Guide: PCT procedure at the EPO

URL

<https://www.epo.org/applying/international/guide-for-applicants.html>

Location

[Home](#) ➤ [Applying for a patent](#) ➤ [International route](#) ➤ [Guide for applicants](#)

International phase and entry into the European phase (Guide for applicants)

15th edition, January 2022

This guide for applicants is aimed at those interested in pursuing the procedure under the PCT and focuses on elements specific to the PCT procedure before the EPO. It is referred to as the "Euro-PCT Guide" to distinguish it from the PCT Applicant's Guide published by WIPO ("WIPO PCT Guide").

Several changes have been made to the latest edition of the Guide in the yearly update.

Content description

The Euro-PCT Guide is of a summary nature. It gives an overview of the procedures under the PCT before the EPO, including entry into the European phase before the EPO as designated/elected Office. The information it provides is not to be considered complete, nor is it intended to replace relevant WIPO publications and EPO decisions and notices concerning specific issues.

The Euro-PCT Guide is based on the information available on 1 January 2022. Any changes to the PCT procedures before the EPO after that date are not reflected in the information provided here. Therefore, in using this Guide, applicants should always verify in particular whether any relevant changes to the procedures have entered into force since 1 January 2022.

Although the information in the Guide is not exhaustive, it aims to cover all the points to note when the EPO acts in its capacity as:

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a receiving Office (RO),
an International Searching Authority (ISA),
a Supplementary International Searching Authority (SISA),
an International Preliminary Examining Authority (IPEA), and/or
a designated or elected Office.

Any comments on the Euro-PCT Guide may be addressed by email to Department 5.2.2.1, PCT Affairs and Procedures (international_pct_affairs@epo.org).

Available formats

The 15th edition of "Euro-PCT Guide: PCT procedure at the EPO" is available online in the EPO's three official languages in both HTML and PDF format. The printed version has been discontinued.

While the HTML version is optimised for online use, the PDF version offers the best solution for off-line browsing, including full-text search functionality.

Last updated: 30.5.2022



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Euro-PCT Guide

PCT procedure at the EPO | January 2022

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"Euro-PCT Guide": PCT procedure at the EPO

**International phase and entry into the
European phase**

Guide for applicants

15th edition
Updated to 1 January 2022

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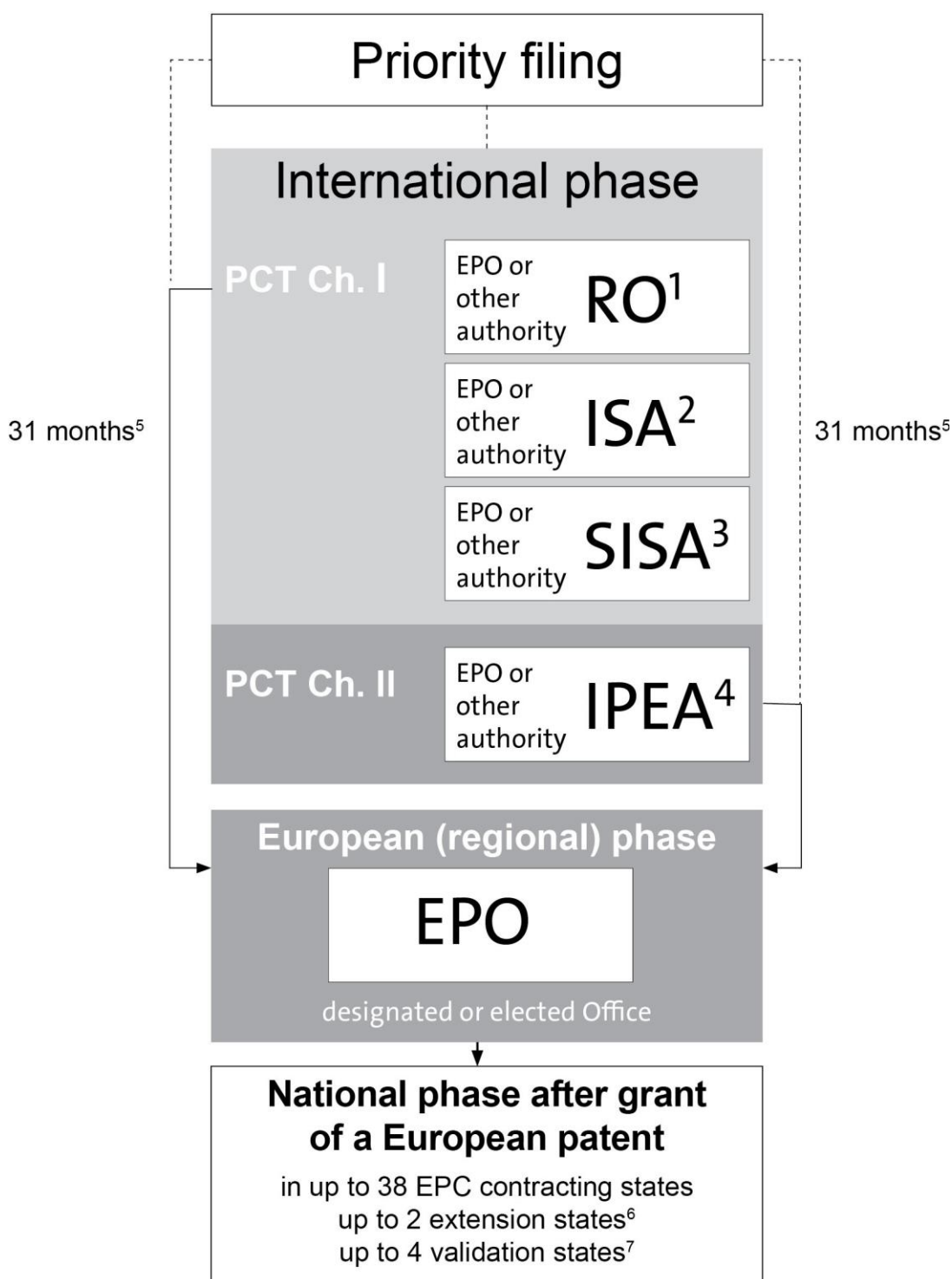
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A. Terms and abbreviations

ADA	Arrangements for deposit accounts
AI	Administrative Instructions under the PCT
Art.	Article(s) (of the EPC or the PCT)
CET	Central European Time
CNIPA	China National Intellectual Property Administration
DAS	Digital Access Service
EPC	European Patent Convention
EPO	European Patent Office
GL/EPO	Guidelines for Examination in the European Patent Office (cited as follows: GL/EPO C-III, 8.4 = Guidelines, Part C, Chapter III, Section 8, point 4)
GL/ISPE	PCT International Search and Preliminary Examination Guidelines
GL/PCT-EPO	Guidelines for Search and Examination at the European Patent Office as PCT Authority (cited as follows: GL/PCT-EPO C-III, 8.4 = Guidelines, Part C, Chapter III, Section 8, point 4)
GL/RO	PCT Receiving Office Guidelines
IB	International Bureau of WIPO
IPEA	International Preliminary Examining Authority
IPER	International Preliminary Examination Report
IPRP	International Preliminary Report on Patentability
ISA	International Searching Authority
ISPE Guidelines	PCT International Search and Preliminary Examination Guidelines
ISR	International Search Report
JPO	Japan Patent Office
KIPO	Korean Intellectual Property Office
OJ	Official Journal of the European Patent Office (cited as follows until December 2013: OJ 2001, 459 = Official Journal, year 2001, page 459; and since January 2014 as: OJ 2015, A51 = Official Journal, year 2015, article 51)
OJ 2007, Spec.Ed.1	Special Edition No. 1 to EPO Official Journal 2007
OFF	Office of first filing
OSF	Office of second filing
PACE	Programme for accelerated prosecution of European patent applications
PCT	Patent Cooperation Treaty
PPH	Patent Prosecution Highway
R.	Rule(s) of the Implementing Regulations (to the EPC or the PCT)
RFees	EPC Rules relating to Fees
RO	Receiving Office

SIS	Supplementary International Search
SISA	Supplementary International Searching Authority
SISR	SIS report
SMEs	Small and medium-sized enterprises
USPTO	United States Patent and Trademark Office
WIPO	World Intellectual Property Organization
WIPO PCT Guide	"PCT Applicant's Guide" published by the International Bureau of WIPO
WO-ISA	Written Opinion of the International Searching Authority

B. The international and European phases of a PCT application



¹ RO = Receiving Office

² ISA = International Searching Authority (to be specified by the RO and, where applicable, chosen by the applicant)

³ SISA = Supplementary International Searching Authority

⁴ IPEA = International Preliminary Examining Authority

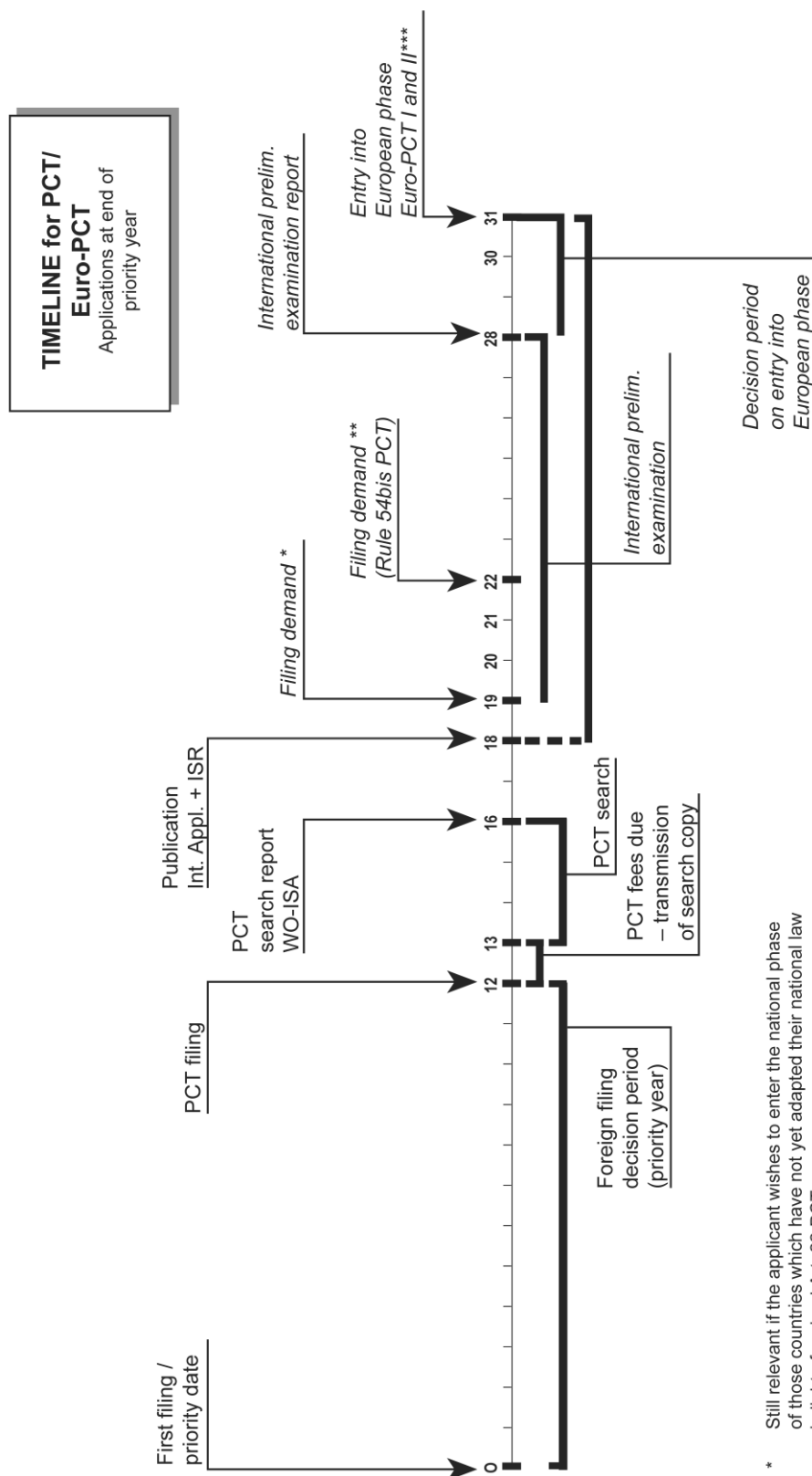
(as for ISA; EPO only when ISA = EPO or XN or XV or AT, ES, FI, SE, TR patent office)

⁵ As from date of filing or earliest date of priority. The 31 month limit applies for entry into the European phase (before the EPO as designated Office (Ch. I) and elected Office (Ch. II)).

⁶ Currently two extension states: BA and ME.

⁷ Currently four validation states: MA, TN, MD and KH.

C. Timeline for international applications



* Still relevant if the applicant wishes to enter the national phase of those countries which have not yet adapted their national law in light of revised Art. 22 PCT.

** If the applicant wishes to enter the national phase of countries that apply the 30/31 month time limit under Article 22 PCT, the demand must be filed prior to the expiration of whichever of the following periods expires later :

- three months from the date of transmittal to the applicant of the ISR and WO-ISA by the ISA, or
- 22 months from the (earliest) priority date

*** As from 01.04.2002, the general deadline for entry into the European phase is 31 months – both according to Chapter I and Chapter II.

Chapter 1 – General overview

1.1 What is the Euro-PCT Guide?

- 1.1.001** This publication is a guide for applicants interested in filing an application under the PCT. It focuses on the elements specific to the PCT procedure before the EPO and includes information on the procedure before the EPO as designated/elected Office. The information it provides is not to be considered complete, nor is it intended to replace relevant WIPO and EPO publications, decisions and notices concerning specific issues.
- 1.1.002** This is the 15th edition of the publication, which is further referred to as the "Euro-PCT Guide".
- 1.1.003** The Euro-PCT Guide is **based on the information available on 1 January 2022**. Any changes to the PCT procedures before the EPO after that date are not reflected in the information provided here. Therefore, in using this Guide, applicants should always verify in particular whether any relevant changes to the procedures have entered into force since 1 January 2022. Information on any changes made after that date can be found in the sources of information mentioned below (see points 1.3.001 ff).
- 1.1.004** Although the information in this Guide is not exhaustive, it aims to cover all the important aspects of the procedures when the EPO acts in its capacity as:
- receiving Office (RO),
 - International Searching Authority (ISA),
 - Supplementary International Searching Authority (SISA),
 - International Preliminary Examining Authority (IPEA) and/or
 - designated or elected Office.
- 1.1.005** Any comments on the Euro-PCT Guide may be addressed to Department 5.2.2.1, PCT Affairs and Procedures (preferably by email to: international_pct_affairs@epo.org).

1.2 What is the applicable law?

- 1.2.001** In all PCT procedures before the EPO, the PCT is applied in accordance with the provisions of Part X of the EPC, "International applications under the Patent Cooperation Treaty – Euro-PCT applications", the Implementing Regulations to the EPC ("EPC Rules") and the relevant further legislation. *Art. 150(1) EPC*
- 1.2.002** The European Patent Convention of 1973 ("EPC 1973") was comprehensively revised in November 2000 ("EPC 2000"). The revised text of the EPC entered into force on 13 December 2007. Since that date some of the Implementing Regulations to the EPC

2000 have been further revised. The most up-to-date version of the EPC 2000 is provided on the EPO website.¹ Any reference in this Guide to the articles of the EPC and the rules of the Implementing Regulations relates to the EPC 2000.

- 1.2.003** The legal basis for all EPO activities under the PCT is Part X of the EPC (Articles 150-153) as implemented by the provisions of the Implementing Regulations to the EPC, in particular Rules 157-165, and by further legislation such as decisions of the President and the Administrative Council of the European Patent Organisation.

1.3 Euro-PCT Guide and other sources of information

- 1.3.001** It is explicitly pointed out that the Euro-PCT Guide is intended to be complementary to, but not a substitute for, the **PCT Applicant's Guide** ("WIPO PCT Guide").

- 1.3.002** The WIPO PCT Guide is published in English and French by the **International Bureau of WIPO** ("IB") in electronic form only.² A German translation is published in paper form by Carl Heymanns Verlag.

- 1.3.003** Regularly updated general information on the EPO and specific information on the procedures before the EPO as receiving Office, International Authority (ISA, SISA and IPEA) and designated/elected Office under the PCT is provided in the annexes to the WIPO PCT Guide.³

- 1.3.004** Relevant information is also provided on the EPO website⁴ and in the **EPO's Official Journal** ("OJ"), which is published in electronic form only.⁵ Applicants are strongly advised to consult these publications and to take note of, in particular, any information published after 1 January 2022.

OJ 2013, 606

- 1.3.005** Up-to-date news about the PCT is available on the **WIPO website** and also from the **PCT Newsletter** and the **Official Notices (PCT Gazette)**, both published in electronic form by WIPO.⁶ Applicants desiring further information about the PCT procedure in the international phase are advised to consult the Administrative Instructions under the PCT ("AI"),⁷ the PCT Receiving Office Guidelines ("GL/RO") and the PCT International Search and Preliminary Examination Guidelines ("ISPE Guidelines", "GL/ISPE"),⁸ all available on the WIPO website.

¹ epo.org/law-practice/legal-texts/epc.html

² wipo.int/pct/en/guide/index.html

³ wipo.int/pct/en/guide/index.html

⁴ epo.org

⁵ epo.org/law-practice/legal-texts/official-journal.html

⁶ PCT Newsletter: wipo.int/pct/en/newslett/
Official Notices (PCT Gazette): wipo.int/pct/en/official_notices/index.html

⁷ AI: wipo.int/pct/en/texts/index.html

⁸ GL/ISPE and GL/RO: wipo.int/pct/en/texts/gdlines.html

- 1.3.006** Since 1 November 2015, applicants have also been able to consult the **Guidelines for Search and Examination at the European Patent Office as PCT Authority** ("PCT-EPO Guidelines", "GL/PCT-EPO"), available on the EPO website.⁹ Any reference to "GL/EPO" in this Guide relates to the **March 2021 edition of the Guidelines for Examination in the European Patent Office**.¹⁰
- OJ 2015, A73*
OJ 2020, A108
OJ 2021, A6, A7

1.4 What is the relationship between the PCT and the EPC?

- 1.4.001** For international applications which are the subject of proceedings before the EPO in any of its functions (see point 1.1.004), the provisions of the PCT and its Regulations ("the PCT Rules") apply, **supplemented** by the provisions of the EPC. *Art. 150(2) EPC*
- 1.4.002** In case of conflict between the provisions of the EPC and those of the PCT or the PCT Rules, the **PCT or the PCT Rules prevail**.
- 1.4.003** The PCT allows offices to notify the IB of an incompatibility of certain provisions with their national law, in which case those provisions do not apply before them. A list of notifications of incompatibility filed by the EPO is published on the WIPO website.¹¹
- 1.4.004** In accordance with the principle of the prevalence of the PCT, applicants should refer to the PCT International Search and Preliminary Examination Guidelines ("GL/ISPE", "ISPE Guidelines") for information on search and examination practice and procedure before the EPO as ISA, SISA and IPEA. In addition, they may also refer to the PCT-EPO Guidelines. In these procedures, the Guidelines for Examination in the European Patent Office (GL/EPO) apply only to the extent that they can be applied in conformity with the supplementary role of the EPC in the international phase unless the EPO has filed a notification of incompatibility for a specific PCT provision (see point 1.4.003). *OJ 2015, A73*
- 1.4.005** In a number of cases the ISPE Guidelines leave a choice between alternative options, from which each ISA/IPEA may select the most appropriate. The options are set out in appendices to the chapters of the ISPE Guidelines. The EPO will choose the option most in line with its own practice under the EPC. A list of policy options chosen by the EPO is provided in the annex to this Guide (see also point 3.2.003).
- 1.4.006** Moreover, an agreement between the EPO and the International Bureau of WIPO ("Agreement EPO-WIPO") concerning the functioning of the EPO as International Authority (ISA, SISA and IPEA) sets out all particulars of the EPO's work in that capacity. *OJ 2017, A115*

⁹ epo.org/law-practice/legal-texts/html/guidelinespct/e/index.htm

¹⁰ epo.org/law-practice/legal-texts/guidelines.html

¹¹ wipo.int/pct/en/texts/reservations/res_incomp.html

The latest agreement of October 2017 entered into force on 1 January 2018. The consolidated version of the text as amended can be found on the WIPO website.¹²

1.5 What is the role of the EPO in the international phase?

- 1.5.001** For international applications under the PCT, the EPO may act as: *Art. 1-49 PCT*
Art. 150-153 EPC
- receiving Office ("**RO**") (see points 2.1.001 ff),
 - International Searching Authority ("**ISA**") (see points 3.1.001 ff),
 - Supplementary International Searching Authority ("**SISA**") (see points 3.4.001 ff) and
 - International Preliminary Examining Authority ("**IPEA**") (see points 4.1.001 ff).

1.6 What is a Euro-PCT application?

- 1.6.001** An international application for which the EPO is a designated or elected Office (see point 1.7.004) and which has been accorded an international filing date has – as from that date – the effect of a regular European application (Euro-direct application). Such an international application, being equivalent to a regular European patent application, is referred to as a "Euro-PCT application". *Art. 11(3), 45(1) PCT*
Art. 153(2) EPC
- 1.6.002** Each international application for which the EPO is designated or elected Office is (also) given a **European application number**. This number is notified to the applicant in a communication informing the applicant of the requirements for entry into the European phase (EPO Form 1201), which, as a rule, is issued approximately ten months after international publication of the application.
- 1.6.003** During the international phase of the processing of an international application no designated or elected Office is allowed to process or to examine that application. This means that a Euro-PCT application will not be processed by the EPO acting as designated or elected Office until it enters the European phase (see point 1.7.002). However, this prohibition may be lifted at the explicit request of the applicant (see points 5.1.022 ff). *Art. 23, 40 PCT*
WIPO PCT Guide
3.005, 5.005

¹² wipo.int/export/sites/www/pct/en/texts/agreements/ag_ep.pdf

1.7 What is the role of the EPO in the European phase?

- 1.7.001** Once an international application has entered the national phase before the EPO, the international application is said to be in the **European phase**. *Art. 22(1), (3), 39(1), (2) PCT
R. 159(1) EPC
WIPO PCT Guide
5.005*
- 1.7.002** The time limit for entering the **European** phase is 31 months from the date of filing or, if priority has been claimed, from the earliest priority date (see point 5.2.001).
- 1.7.003** An up-to-date overview of the applicable time limit for entry into the national phase in each PCT contracting state – including the EPC contracting states where the national route is preferred – is available on the WIPO website.¹³
- 1.7.004** If an international application enters the European phase (see points 5.2.001 ff), the EPO will act:
- as **designated Office** if the international application was only processed under PCT Chapter I proceedings (international search and publication of the application);
 - as **elected Office** if the international application at the request of the applicant was also processed under PCT Chapter II proceedings (international preliminary examination) (see points 4.1.001 ff and points 5.1.003 ff).

1.8 Contracting states to the PCT and the EPC

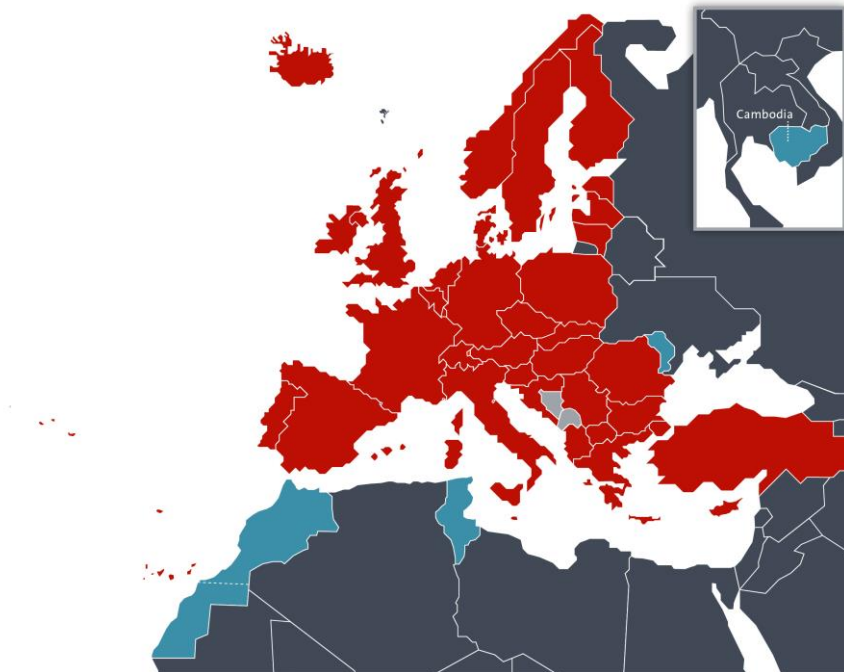
- 1.8.001** On 1 January 2022 the EPC was in force in a total of 38 states: Albania (AL), Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (GR), Hungary (HU), Iceland (IS), Ireland (IE), Italy (IT), Latvia (LV), Liechtenstein (LI), Lithuania (LT), Luxembourg (LU), Malta (MT), Monaco (MC), Netherlands (NL), North Macedonia (MK), Norway (NO), Poland (PL), Portugal (PT), Romania (RO), San Marino (SM), Serbia (RS), Slovakia (SK), Slovenia (SI), Spain (ES), Sweden (SE), Switzerland (CH), Turkey (TR) and United Kingdom (GB). The EPC contracting states are shown in red on the map after point 1.8.004. *GL/EPO, General
Part, 6*
- 1.8.002** **All EPC contracting states are also contracting states to the PCT and are bound by its Chapter II.** The EPO can therefore act as designated and elected Office for any EPC contracting state provided the international application was filed on or after the date on which the EPC entered into force for the state concerned. This means that no European patent can be granted for an EPC contracting state on the basis of an international application filed prior to the date of entry into force of the EPC for that state. For further information on the (dependent) territories of the EPC *Art. 64(1) PCT
OJ 2014, A33
WIPO PCT Guide,
Annex A
OJ 2020, A55*

¹³ wipo.int/pct/en/texts/time_limits.html

contracting states to which the PCT has been extended, see the notice from the EPO published in OJ 2014, A33, as well as the overviews of the territorial applicability of the PCT and the EPC in Annex A to the WIPO PCT Guide¹⁴ and in OJ 2020, A55.

1.8.003 For some EPC contracting states, patent protection on the basis of an international application can only be obtained via the European route, i.e. by entering the European phase to obtain a European patent for the state concerned, since these states have closed off the possibility of entering into the national phase before the national office concerned (see point 2.11.007). *Art. 45(2) PCT*

1.8.004 European patents may also take effect in states other than EPC contracting states via a system of extension (in light grey on the map below) or validation (in blue on the map below). For information on extension states, see points 2.12.001 ff. For information on validation states, see points 2.13.001 ff.



1.9 Representation in the international phase

1.9.001 Any attorney, patent agent or other person ("agent") having the right to practise before the national or regional patent office with which the international application was filed is entitled to practise in respect of that application before:

- this national or regional office acting as receiving Office,
- the IB,
- the competent ISA,

*Art. 27(7), 49 PCT
R. 90.1 PCT
Art. 133, 134 EPC
WIPO PCT Guide
5.041-5.051,
10.019-10.023,
11.001-11.014*

¹⁴ wipo.int/export/sites/www/pct/guide/en/gdvol1/annexes/annexa/ax_a.pdf

- the competent SISA and
- the competent IPEA.

1.9.002 An agent so appointed before the receiving Office is referred to as "the agent for the international phase". Applicants are strongly advised to appoint an agent already at the time of filing an international application with the receiving Office.

1.9.003 Two or more applicants may choose to appoint either a **common agent** for the international phase or one of the said applicants who is a national or resident of a PCT contracting state to act as their **common representative**, who in turn may then appoint an agent.

*R. 2.2, 2.2bis,
90.2(a), 90.3 PCT*

1.9.004 If no common agent or common representative has been appointed, the applicant first named in the request who is entitled to file an international application is considered to be the common representative (see points 2.10.006 ff). The "deemed common representative" is not entitled to sign notices of withdrawal on behalf of co-applicants. If a deemed common representative has appointed an agent, the latter will be considered to be the agent of record and may validly perform any act which could be performed by the deemed common representative. If an agent has been appointed by a co-applicant of the deemed common representative, the agent will be entitled to act only on behalf of that co-applicant.

*R. 90bis.5, 90.2(b)
PCT
PCT Newsletter
10/2013, 11
7-8/2014, 11
6/2017, 8
1/2020, 5*

1.9.005 More information on representation specifically before the EPO is provided in points 2.10.001 ff (EPO as RO), 3.1.020 ff (EPO as ISA), 4.1.047 ff (EPO as IPEA) and in 5.3.006 ff (EPO as designated or elected Office).

1.10 Computation of time limits in the international phase

1.10.001 If a time limit in any procedure in the international phase starts to run upon issue of a communication, the day of the date of that communication is decisive for computing the end of that time limit, not the date of its receipt. In this respect the PCT differs from the EPC, where the date of receipt of a communication is relevant.

*R. 80.6 PCT
R. 126-129, 131(2)
EPC
PCT Newsletter
4/2021, 10*

1.10.002 However, if an applicant proves to the satisfaction of the EPO as receiving Office, ISA, SISA or IPEA that the dispatch of a communication did not take place on the date that the document bears, the actual date of mailing will be taken as the basis for computing the applicable time limit. Furthermore, if a communication was received more than seven days after the date it bears, the applicable time limit will be extended by the number of days by which the communication was received later than seven days after the date it bears.

1.11 Excuse of delays in meeting time limits in the international phase

- 1.11.001** In the case of a delay in meeting time limits in the international phase due to force majeure, applicants or any interested party has to provide the EPO with evidence that a time limit fixed in the PCT Rules was not met due to war, revolution, civil disorder, strike, natural calamity, a general unavailability of electronic communications services or other like reason in the locality where the interested party resides, has their place of business or is staying, and that the relevant action was taken as soon as reasonably possible. Any such evidence must be provided to the EPO no later than six months after the expiry of the time limit applicable in the given case. If such circumstances are proven to the satisfaction of the EPO, the delay in meeting the time limit will be excused.
- R. 82quater.1 PCT
AI, Section 111
WIPO PCT Guide
11.065, 11.065A*
- 1.11.002** In the case of a delay in meeting time limits in the international phase due to the unavailability at the EPO of any of the permitted electronic means of communication or means of online payment, applicants may submit a request for excuse of the delay indicating that the time limit was not met due to the unavailability of one of the permitted electronic means of communication or means of online payment on a specific date. They are not required to submit evidence to the EPO. Reference to the notification from the EPO of unavailability of electronic means of communication as published by the International Bureau will be sufficient for the EPO to assess the applicant's request. The applicants must, however, perform the relevant action on the next working day on which all permitted means of electronic filing or means of online payment are available. Applicants are informed without delay of the EPO's decision via Form PCT/RO/132.
- R. 82quater.2 PCT
AI, Section 111
WIPO PCT Guide
11.065B, 11.065C
Official Notices (PCT Gazette) – 26
November 2020,
254-255
PCT Newsletter
12/2020, 1
OJ 2020, A120*
- 1.11.003** The excuse of a delay due to force majeure or the unavailability of any of the permitted electronic means of communication or means of online payment under Rules 82quater.1 and 82quater.2 PCT only applies to time limits fixed in the PCT Rules. Therefore it applies neither to the priority period, since the priority period is set by Article 4C of the Paris Convention, nor to the time limit for entering the European phase in accordance with Articles 22 and 39 PCT. A right of priority may be restored only under strict conditions (see points 2.15.001 ff). It is therefore recommended that any subsequent application be filed as early as possible.
- R. 82quater.1 PCT
R. 82quater.2 PCT
R. 26bis.3 PCT
OJ 2020, A120*
- 1.11.004** For the legal remedies available in cases of non-observance of time limits due to the disruptions caused by the COVID-19 outbreak, it is advisable to refer to the information regularly published in the Official Journal and on the EPO website.¹⁵

¹⁵ epo.org/news-events/covid-19.html

1.12 External complaints

1.12.001 External complaints may concern any service or product delivered by the EPO, including all PCT products, and may be submitted by any person, including applicants. They may be submitted using the online form available at new.epo.org/en/formal-complaint.

1.12.002 Complaints are forwarded to a dedicated EPO unit responsible for ensuring that any complaint is dealt with fairly and efficiently and that suitable action is taken to address it. All complaints receive a detailed reply. Complaints having a substantive and/or procedural bearing on proceedings before the EPO and the replies thereto are normally included in the public part of the file. *GL/EPO E-VI.4*

1.12.003 The complaint handling procedure does not replace the procedures laid down in the PCT; nor does the unit responsible for handling complaints take decisions on procedural requests. The department competent for the proceedings concerned decides on:

- (a) complaints relating to procedural and/or substantive aspects of specific pending proceedings which are submitted by a party to those proceedings. All parties to the proceedings will be informed accordingly.
- (b) complaints relating to substantive issues which are submitted by a third party while proceedings are pending before the EPO. Such a submission will be treated as a third-party observation (see point 4.2.015).

Chapter 2 – The EPO as a PCT receiving Office

2.1 Who may file an international application with the EPO?

- 2.1.001** An international application may **at the applicant's option** be filed:
- with the national office of the PCT contracting state of which the applicant is a resident or national, or with the office acting for that state, or
 - with the IB as receiving Office.
- 2.1.002** A third option exists for applicants who are nationals or residents of a state which is a contracting state to both the PCT and the **EPC**, since they may also file international applications with the **EPO** acting as a **receiving Office**. In such cases it is sufficient that at least one applicant is a national or resident of such a contracting state, regardless of whether that applicant is for example mentioned in Box II of the PCT Request as applicant for the designation of the US or any other PCT contracting state only and, as the case may be, also as inventor. A person mentioned only as inventor does not qualify as an applicant. Hence, the nationality or residence of a person mentioned only as inventor is irrelevant for determining whether the EPO is competent to act as receiving Office.
- 2.1.003** If there are **two or more applicants**, it is sufficient for at least one of them to satisfy these requirements. For instance, if a national or resident of a contracting state to the PCT and the EPC is mentioned in the PCT request form as inventor and applicant for the purposes of the United States only, the international application may be filed with the EPO as receiving Office regardless of the residence and nationality of the other applicant(s).
- 2.1.004** The national patent offices of Belgium, Monaco and San Marino have ceased to act as receiving Offices under the PCT and delegated this task to the EPO. The EPO will therefore act as receiving Office on their behalf for all international applications filed by applicants who are nationals or residents of one of these states.
- 2.1.005** When the EPO acts as receiving Office, the EPO will process the application in accordance with the relevant provisions of the PCT, including the PCT Receiving Office Guidelines (GL/RO) and the Administrative Instructions under the PCT (AI) (see points 1.2.001 ff and 1.3.001 ff).

*Art. 9, 10 PCT
R. 19.1, 19.2 PCT
WIPO PCT Guide
5.008-5.009*

*R. 4.5(d), 18, 19.1(b) PCT
Art. 151 EPC
R. 157 EPC
OJ 2014, A33
PCT Newsletter
11/2020, 1
WIPO PCT Guide,
Annex A
OJ 2020, A55*

*OJ 2014, A33
Section 203 AI
WIPO PCT Guide
5.020-5.023
PCT Newsletter
5/2012, 8
4/2014, 6*

*R. 19.1(b) PCT
OJ 2018, A17, A105
OJ 2019, A96*

2.2 How must an international application be filed with the EPO as receiving Office?

- 2.2.001** International applications must be filed using the PCT request form (PCT/RO/101), preferably in electronic form (e-filing) or alternatively on paper. They may be filed online, by delivery by hand, by post or by fax. If the application is filed in electronic form, fee reductions apply (see point 2.26.024). *R. 11, 92.4 PCT
OJ 2017, A11
OJ 2018, A18, A27
OJ 2019, A18
OJ 2021, A42, A43
WIPO PCT Guide
6.003*
- 2.2.002** It is not possible to file an international application by email, telegram, telex or Teletext.

E-filing

- 2.2.003** International applications may be filed in electronic form with the EPO as receiving Office, either online or offline on an electronic data carrier ("physical medium"). *R. 89bis PCT
OJ 2021, A42, A43
GL/EPO A-II, 1.2.2
PCT Newsletter 7-8/2020, 2*
- All documents filed electronically must comply with the requirements set out in Part 7 of the Administrative Instructions under the PCT and their Annex F, which sets out the standard for the electronic filing and processing of international applications.

How can an international application be filed online?

- 2.2.004** Applicants can currently choose from various online filing options offered by the EPO and WIPO. The ones offered by the EPO are: *OJ 2020, A105
OJ 2021, A42, A43
AI, Part 7, Annex F
GL/EPO A-II, 1.2.2*
- Online Filing, a software application that authenticates users via smart card and can be used to prepare and file international applications and further documents (alternatively, applications and further documents prepared in Online Filing can then be filed on electronic data carriers accepted by the EPO; see point 2.2.009);
 - Online Filing 2.0, a web-based system accessible from most browsers that authenticates users via smart card. It is interoperable with WIPO's ePCT service, with ePCT embedded into Online Filing 2.0 for filling in and validating PCT/RO/101, PCT-DEMAND and PCT-SFD. Review, signing and submitting as well as saving drafts or storing signed applications in encrypted format is done within Online Filing 2.0 on a secure network hosted by the EPO. It is not necessary to install any software except for the smart card; and
 - Web-form filing, a browser-based system which allows applicants to log on with a username and password in order to upload and submit PDFs via a secure internet connection; such PDFs need to comply with Part 7 of the Administrative Instructions under the PCT and their Annex F.

2.2.005 The EPO's Online Filing software and the required smart card are free of charge, as are Online Filing 2.0 and web-form filing. More information on the EPO's online services is available on the EPO website.¹⁶

2.2.006 As regards online filing tools currently offered by WIPO, the EPO as receiving Office only accepts international applications filed using ePCT, a browser-based system accessible via a secure connection and offering several means for user authentication (e.g. digital certificate, authenticator application for one-time passwords) that can be used to prepare and file international applications, PCT Chapter II demand and further documents.

2.2.007 Information on the ePCT service is available on the WIPO website.¹⁷

2.2.008 The online filing of an international application with the EPO as receiving Office triggers the electronic acknowledgement of receipt. The acknowledgement indicates the receiving Office, the date and time of receipt, the reference or application number allocated by the EPO, the list of the files transmitted and a message digest, i.e. the message in compressed form. For international applications filed using web-form filing, EPO Form 1031 is sent in addition to the electronic acknowledgment of receipt (see point 2.2.020).

*OJ 2020, A59
PCT Newsletter
5/2020, 7*

How can an international application be filed electronically on a physical medium ("offline filing")?

2.2.009 The physical media accepted by the EPO as receiving Office are CD-R, DVD+R and DVD-R. For more information, please refer to the WIPO PCT Guide.¹⁸

OJ 2021, A42

2.2.010 If an international application is filed on a physical medium, the acknowledgement of receipt is sent by post using EPO Form 1031, in the same way as it would be for an application filed by delivery by hand or by post (see point 2.2.020).

What is the purpose of filing in pre-conversion format?

2.2.011 If any document making up the international application has been prepared by conversion from a different electronic document format (pre-conversion format), the applicant may submit the document in that format too, preferably together with a statement that the international application in electronic form is a complete and accurate copy of the document in pre-conversion format. Each pre-conversion document must be in a format that fulfils the

*OJ 2021, A42
PCT Newsletter
7/2008, 1
5/2008, 2
AI, Part 7, Section
706*

¹⁶ epo.org/applying/online-services.html

¹⁷ wipo.int/pct-safe/en/download/download_client.html,
pct.wipo.int/,
wipo.int/pct-safe/en/index.html

¹⁸ wipo.int/pct/guide/en/gdvol1/annexes/annexc/ax_c_ep.pdf
wipo.int/pct/guide/en/gdvol1/annexes/annexd/ax_d_ep.pdf

requirements stipulated in the decision of the President of 14 May 2021. It is recommended that pre-conversion documents be submitted as ZIP files. The purpose of filing in pre-conversion format is that, if an applicant discovers that the relevant part of the international application as filed in electronic form is not a complete and accurate copy of the document submitted in pre-conversion format, they may ask the EPO in its capacity as receiving Office to correct the international application accordingly within 30 months of the priority date.

How can an application be filed with the EPO by delivery by hand or by post?

- | | | |
|----------------|---|--|
| 2.2.012 | As a rule, the date of filing accorded to an application filed with the EPO by delivery by hand or by post is the date of handing over or receipt, respectively, at an EPO filing office . The EPO has filing offices in Munich, The Hague and Berlin. Please note that neither the sub-office in Vienna nor the Brussels Bureau is a filing office. The EPO's addresses and opening hours can be found on its website. ¹⁹ | <p><i>OJ 2006, 439</i>
 <i>OJ 2017, A11</i>
 <i>OJ 2018, A18, A27</i>
 <i>OJ 2019, A19</i>
 <i>GL/EPO A-II, 1.1</i></p> |
| 2.2.013 | Automated mailboxes are installed in Munich (Zollstrasse) and Berlin next to the EPO building. These automated mailboxes may be used at any time. The automated mailbox at the EPO headquarters in Munich (Isar building, Kohlstrasse) has been closed since 1 April 2017. Outside opening hours, at all filing offices, documents may be handed to the porter, who will security-scan them on receipt. | |
| 2.2.014 | If the applicant has chosen the EPO as receiving Office the international application should be sent directly to one of the EPO filing offices and not to a national patent office (see point 2.1.002). | <p><i>Art. 10 PCT</i>
 <i>R. 157(1) EPC</i></p> |
| 2.2.015 | The national law of an EPC contracting state may prescribe that an international application is to be filed with the EPO as receiving Office via its national patent office. Only in that case may the application be filed with the EPO as receiving Office via the national patent office of the EPC contracting state concerned. | <p><i>Art. 27(8) PCT</i>
 <i>Art. 75(2), 151 EPC</i>
 <i>R. 157(1) EPC</i>
 <i>PCT Newsletter</i>
 <i>6/2014, 11</i></p> |
| 2.2.016 | If, pursuant to national law, the international application must be filed with the EPO as receiving Office via the competent national patent office, this office will only be acting as a "filing office" for the EPO and not as receiving Office. The date of receipt of the application by the national patent office concerned, on behalf of the EPO as receiving Office, will be considered the international filing date, on condition that the application meets the PCT requirements for a filing date to be accorded. | |
| 2.2.017 | In these cases the national patent office concerned must ensure that the application reaches the EPO no later than two weeks before the end of the thirteenth month from filing or, if priority is claimed, from the earliest date of priority. | <p><i>R. 157(3) EPC</i></p> |

¹⁹ epo.org/applying/european/filing.html

- 2.2.018** The addresses of the national patent authorities of the EPC contracting states and information on national legislation are provided in the brochure "National law relating to the EPC".²⁰
- 2.2.019** The documents constituting an international application must be filed with the EPO as receiving Office **in one copy only**: PCT request form, description, claims, abstract and drawings (Box No. IX of the PCT request form). The same applies to any *other* documents referred to in Rule 3.3(a)(ii) PCT and listed in Box No. IX of the PCT request form.
- 2.2.020** To acknowledge receipt of a purported international application filed by delivery by hand or by post, the EPO as receiving Office will send EPO Form 1031 by post, as a rule within four working days. The acknowledgement explicitly confirms the receipt of each separate document and item making up the purported international application (e.g. description, claims, abstract, data carrier, letter).

Art. 3(2), 4-7 PCT
R. 3.3, 4-8, 11.1 PCT
R. 157(2) EPC
WIPO PCT Guide
5.010, 5.179
OJ 2006, 439

OJ 2019, A19
GL/EPO A-II, 3.1

What happens in the event of loss or delay in the post?

- 2.2.021** In cases of loss or delay, the EPO accepts evidence of mailing a document only if it was mailed via the postal authorities or if one of the following postal service providers was used instead: Chronopost, DHL, Federal Express, flexpress, TNT, SkyNet, UPS or Transworld. As evidence, confirmation of registration by the post office or confirmation of receipt by the postal service provider must be provided at the request of the EPO.
- 2.2.022** Rule 82.1 PCT excusing a loss or a delay in the post is not applicable to the priority period because this provision may only be applied in respect of time limits fixed in the PCT. It is only under strict conditions that a right of priority may be restored (see points 2.15.001 ff). It is therefore recommended that any subsequent application be filed as early as possible.

Art. 48(1) PCT
R. 82.1(d), (e) PCT
WIPO PCT Guide
11.063, 11.064
OJ 2015, A29

Art. 48(1) PCT
R. 82.1 PCT
R. 26bis.3 PCT

Can an international application be filed by fax?

- 2.2.023** An international application may, together with further documents other than authorisations and priority documents, be filed by fax with the EPO as receiving Office. The fax numbers are available on the EPO website.²¹
- 2.2.024** If an international application is filed by fax, the date on which the facsimile application documents are received in full at the EPO is accorded as the date of receipt of the application. Each of the EPO filing offices is based in the Central European Time zone (CET).
- 2.2.025** If an international application is filed by fax, the original, i.e. **the confirmation copy, is to be filed simultaneously**, and the fax

R. 92.4 PCT
OJ 2019, A18
OJ 2019, A19
WIPO PCT Guide
6.003

OJ 2019, A18
OJ 2019, A19

²⁰ epo.org/law-practice/legal-texts/national-law.html

²¹ epo.org/applying/european/filing.html

should state that the confirmation copy has been filed separately on paper at the same time (see point 2.2.012).

- 2.2.026** Further, on the first sheet of the PCT request form filed as confirmation copy it should be indicated that the international application has previously been filed by fax, in the form of the words "CONFIRMATION COPY" followed by the date of fax transmission.
- 2.2.027** If the confirmation copy is not submitted within 14 days, the applicant will be invited to submit it. If the confirmation copy is not received after expiry of the time limit set in this invitation, the application will be considered withdrawn. *R. 92.4(d), (e), (f), (g) PCT*
R. 29.1 PCT
- 2.2.028** As for applications filed by delivery by hand or by post, the EPO as receiving Office will send EPO Form 1031 by post, as a rule within four working days, to acknowledge receipt of a purported international application filed by fax (see point 2.2.020). The acknowledgement explicitly confirms the receipt of each separate document and item making up the international application (e.g. description, claims, abstract, data carrier, letter). *OJ 2019, A19*
GL/EPO A-II, 3.1

Can an international application be filed by email, telegram, telex or similar means?

- 2.2.029** An international application **cannot** be filed with the EPO by email, telegram, telex or similar means. Applications so filed cannot be accorded a valid date of filing. For filing in electronic form see points 2.2.003 ff. *OJ 2000, 458*
OJ 2019, A18
- 2.2.030** Email, telegram, telex and similar means have **no legal effect** in the proceedings under the PCT and cannot be used validly to perform **any** procedural act. Therefore, no time limit for such act can be complied with by such means.

How can further documents be filed?

- 2.2.031** After an international application has been filed, other documents may be filed in any proceedings before the EPO online or by delivery by hand, by post or by fax at the EPO filing offices. However, priority documents issued in paper form which have to be certified by the issuing authority should also be submitted to the EPO in that form to ensure the validity of the certification. For that reason, they may not be filed by fax or via the EPO web-form filing service. On the other hand, priority documents issued in electronic form are accepted only if they are digitally signed by the issuing authority and if that signature is also accepted by the EPO. Applicants filing an international application claiming the priority of an application filed with an office participating in the WIPO Digital Access Service (DAS) may request the IB to obtain a certified copy of the earlier application via DAS.²² *R. 17.1 PCT*
OJ 2016, A78
OJ 2019, A18, A27
OJ 2021, A42, A43

²² For a list of the participating offices, see wipo.int/das/en/participating_offices.html.

2.2.032 There is no obligation to file a confirmation copy of subsequent documents filed by fax, but the EPO as receiving Office may require one to be submitted and will do so in particular if the applicant has submitted substitute sheets under Rule 26 PCT and/or any sheets to be incorporated by reference under Rule 20.6 PCT. In these cases, applicants are advised to submit a confirmation copy on their own initiative directly after sending the sheets concerned by fax (see point 2.2.025). If a confirmation copy is not submitted within the time limit prescribed in the invitation issued by the EPO as receiving Office, the document will be treated as not having been received.

R. 92.4(g)(iii)
OJ 2019, A18

How can I get electronic communications from the EPO in the international phase?

2.2.033 Applicants interested in receiving electronic notifications of communications from the EPO during the international phase currently have the following options:

– EPO Mailbox service

Art. 27(7) PCT
Art. 134 EPC
OJ 2021, A5

The Mailbox service allows registered users to receive communications from the EPO electronically and so access them immediately and securely. The current version of the Mailbox only allows one-way communication from the EPO to the user, who therefore cannot use it to reply to communications. Applicants choosing to get electronic notifications via the Mailbox will no longer receive paper notifications. It is currently available to European representatives acting under the PCT (registered European professional representatives and legal practitioners, including where they are specifically appointed for the procedure before the EPO as (S)ISA and/or IPEA; see points 3.1.020 ff, 3.4.016 ff and 4.1.047 ff) and applicants who have their residence or place of business in an EPC contracting state.²³

– WIPO's ePCT system

Any interested applicant or agent can open an ePCT account and link their international applications to it. ePCT offers immediate online access to any document issued by the offices involved in the PCT procedure. Users can activate an automatic email notification service for newly added documents, although notifications issued via ePCT are at present a courtesy service and do not replace paper notifications. ePCT can also be used to submit documents to participating receiving Offices (including the EPO), participating Authorities (including the EPO as ISA and IPEA) and the IB.²⁴

²³ Detailed information on the Mailbox service is available at epo.org/applying/online-services/mailbox.html.

²⁴ wipo.int/export/sites/www/pct/ar/epct/pdf/epct_user_guide.pdf

2.3 Elements of the international application

- 2.3.001** An international application **must** contain the following elements: PCT request, description, claim(s) and an abstract. Drawings must only be filed when they are necessary for the understanding of the invention. As regards international applications in the field of biotechnology see also the information in [points 2.22.001 ff.](#) *Art. 3(2), 7 PCT PCT Newsletter 4/2017, 9 WIPO PCT Guide 5.010*
- 2.3.002** The international application has to be filed with the EPO as receiving Office **in one copy only**. However, if the application is filed by fax a confirmation copy must be filed ([see points 2.2.025 ff.](#)). *R. 11.1 PCT R. 157(2) EPC OJ 2006, 439 WIPO PCT Guide 5.179*

2.4 How can missing elements or parts be incorporated into the international application by reference?

- 2.4.001** If the applicant has omitted to file an **entire element** of the international application, i.e. the whole description or all of the claims, or a **part of** the description, the claims or the drawings (including the case where all drawings appear to be missing), this element or part may be incorporated into the international application under the conditions set out in [Rules 4.18 and 20.6 PCT](#) in conjunction with [Rule 20.7 PCT](#). If all conditions are met, such incorporation will not affect the international filing date. This procedure may be summarised as follows: *R. 4.18, R. 20.3 PCT, 20.5, 20.6, 20.7 PCT WIPO PCT Guide 6.028*
- 2.4.002** Firstly, such incorporation requires that the missing element or part be completely contained in an application from which priority was (validly) claimed **on the date** on which one or more elements referred to in [Article 11\(1\)\(iii\) PCT](#) were first received by the EPO as receiving Office ([see points 2.14.001 ff.](#)). The test for "completely contained" requires that the later filed missing element or part – e.g. a paragraph, a page or a drawing – be identical to the corresponding text/drawing in the priority document.
- 2.4.003** Secondly, the PCT request must contain a statement of incorporation by reference of missing elements or parts. Such a statement is already provided in Box VI of the PCT request form.
- 2.4.004** If both conditions are met, an applicant who has omitted to file an element or part or may include it by confirming its incorporation by reference. This requires that the conditions for confirmation set out in [Rules 20.6\(a\) and 20.7 PCT](#) are also met.
- 2.4.005** If all conditions are met, the missing element or part is considered to be incorporated by reference and the international filing date stays the same.
- 2.4.006** If the EPO as receiving Office finds that not all the requirements of [Rules 4.18 and 20.6\(a\) PCT](#) have been complied with (within the time limit prescribed by [Rule 20.7 PCT](#)) or that the element or part concerned is not completely contained in the earlier application, it will proceed to a negative finding under paragraph 205D of the PCT Receiving Office Guidelines and notify the applicant that the

element or part is not considered to have been contained in the international application.

2.4.007 Applicants wishing to add a missing element or part to an international application which has no basis in a claimed priority application may do so under the conditions set out in Rule 20.5 PCT. However, the filing date of the application as a whole will then be the date on which the missing element or part was filed.

2.4.008 The procedure before the EPO as ISA/IPEA in the case of a positive/negative decision by the receiving Office on a request for incorporation by reference is set out below (see points 3.2.017 ff and 4.2.008).

2.5 How can erroneously filed elements or parts be corrected?

2.5.001 If an international application contains an erroneously filed element (the whole description or all of the claims) or an erroneously filed part of the description, claims or drawings (including the case where all the drawings have been erroneously filed), the applicant may correct the international application by furnishing the correct element or part under Rule 20.5bis PCT. *R. 20.5bis PCT
OJ 2020, A81
PCT Newsletter, 7-8/2020, 15*

2.5.002 The EPO as receiving Office will process requests for correction under Rule 20.5bis PCT only if:

(a) the correct element or part is furnished by the applicant on or before the date on which the international filing date is accorded (Rule 20.5bis(b) PCT), in which case the wrong element or part will be replaced with the correct one and the international filing date will be the date on which all the requirements of Article 11(1) PCT are fulfilled; *R. 20.5bis(b) PCT
Section 310 AI
GL/RO 203A*

or

(b) the correct element or part is furnished by the applicant after the date on which the international filing date has been accorded and no incorporation by reference is requested (Rule 20.5bis(c) PCT), in which case the wrong element or part will be replaced with the correct one but the international filing date will be shifted to the date on which the correct element or part was received unless the applicant requests that it be disregarded (Rule 20.5bis(e) PCT). *R. 20.5bis(c) PCT
Section 310 and 310bis AI
GL/RO 203A and B*

2.5.003 The EPO as receiving Office will not process requests for correction if the correct element or part is furnished by the applicant for the purpose of incorporating it by reference (Rule 20.5bis(d) and 20.8(a-bis) PCT). Such requests can be processed only if the applicant authorises the transmittal of the international application to the IB, which would then act as receiving Office for that application (Rule 19.4(a)(iii) PCT). This will have no negative consequences for the applicant since the IB as receiving Office will deem the date on which the international *R. 19.4(a)(iii),
20.5bis(a)(iii) and (d),
20.8(a-bis) PCT
Section 309(g) AI
GL/RO 195
PCT Newsletter,
4/2020, 4*

application was received by the EPO to be the date of receipt (Rule 19.4(b) PCT). No fee will be charged under Rule 19.4(b) PCT for such transmittal. If the applicant does not authorise the transmittal, the request will be treated as a request for correction under Rule 20.5bis(b) or (c) PCT.

2.6 International filing date

2.6.001 The following criteria must be met for the receiving Office to accord an international application an international filing date:

Art. 11 PCT
WIPO PCT Guide
6.005

- the applicant is entitled to file it with the receiving Office;
- it is in the prescribed language;
- it indicates that it is intended as an international application;
- it designates at least one contracting state;
- it states the applicant's name;
- it contains a description; and
- it contains a claim or claims.

2.6.002 No other criteria must be met to obtain an international filing date. However, if the international application is filed without a title or an abstract, the receiving Office will invite the applicant to provide one. If no abstract or title is then submitted, the application is considered withdrawn.

Art. 14 PCT
R. 8, 26 PCT

2.6.003 Applicants must carefully consider the date on which an international application is to be filed and accordingly choose an appropriate way of filing to assure timely receipt at the EPO (see point 2.2.001).

2.6.004 The date of receipt (which may qualify as the international filing date under Article 11(1) PCT; see point 2.6.001) of an application filed with the EPO as receiving Office is the date on which the application is received at the EPO or, in exceptional cases (see points 2.2.015-2.2.019), at a national patent office of an EPC contracting state acting as filing office on behalf of the EPO.

2.6.005 Each international application has a single filing date. The term "international filing date" should therefore not be interpreted as if there is any further filing date in respect of an international application. The word "international" only refers to the fact that the application concerned was filed as an application under the PCT.

2.6.006 The (international) filing date is not to be confused with the date of entry into the European phase before the EPO or into any national phase before a designated/elected Office (see graphic under point B. "The international and European phases of a PCT application"). This means that even after entry into the European phase any reference to the filing date of the international application concerned is a reference to the international filing date (see points 5.2.001 ff).

2.7 Is it possible to file divisional applications in the international phase?

- 2.7.001 The PCT does not provide for the possibility of filing a divisional application. However, once the international application (i.e. the parent application) has validly entered the European phase, it is possible to file divisional applications with the EPO as designated/elected Office (see point 5.18.001).

GL/EPO E-IX, 2.4.1

2.8 The PCT request

- 2.8.001 International applications **must** be filed using **the PCT request form** (PCT/RO/101) or a corresponding computer printout. Applicants are advised to read carefully the PCT request form and the explanatory notes before completing the form. For electronic filing, see points 2.2.003 ff.

Art. 3, 4, 11(1)(iii) PCT
R. 3, 4 PCT
WIPO PCT Guide
5.015-5.093

- 2.8.002 Copies of the PCT request form and the explanatory notes are available free of charge from the EPO, the IB and national patent offices. Both documents may also be downloaded from the WIPO website.²⁵

2.9 Should the inventor be designated in the request?

- 2.9.001 It is recommended that the inventor always be identified (Box No. III, PCT request form) unless there are special reasons for not doing so. The name and address of the inventor must be furnished in the PCT request form if the applicant wants to enter the national phase of a state requiring that the data of the inventor be given in the request upon filing. The consequences of non-compliance are a matter of national law. For up-to-date information on the national law of each of the PCT contracting states, see the WIPO PCT Guide, Annex B.

Art. 4(1)(v) PCT
R. 4.1(a)(iv) PCT
WIPO PCT Guide
5.035-5.038
PCT Newsletter
8-9/2013, 8
PCT Newsletter
10/2020, 14

- 2.9.002 In so far as the applicant aims to obtain a European patent, the data concerning the inventor – if not already submitted during the international phase – must be provided upon entry into the European phase (see points 5.2.006 and 5.12.001 ff).

Art. 22(1) PCT
R. 159, 163(1) EPC
GL/EPO E-IX, 2.3.4

²⁵ wipo.int/pct/en/forms/index.htm

2.10 Who may represent an applicant before the EPO as receiving Office?

- 2.10.001** Information on the representation of the applicant(s) during the international phase is to be provided in Box No. IV of the PCT request form. Before filling in the box, applicants should carefully read the instructions provided in the Notes to the PCT request form concerning Box No. IV and the information given below (see points 2.10.002-2.10.020).
- Art. 27(7), 49 PCT
R. 90.1 PCT
Art. 133, 134 EPC
OJ 2010, 335
WIPO PCT Guide
11.001-11.014*
- 2.10.002** The PCT explicitly allows the receiving Office to apply its national law to the extent that it requires applicants to be represented by an agent having the right to represent them before it. Therefore, the EPC provisions concerning professional representation apply in respect of international applications processed by the EPO as receiving Office. According to the EPC, applicants not having their residence or principal place of business in an EPC contracting state need to be represented by a professional representative. Two categories of representatives ("agents" in PCT terminology) have the right to practise before the EPO as receiving Office:
- Art. 27(7) PCT
Art. 133(1), (2) EPC
OJ 2020, A19*
- professional representatives or associations of representatives entered in the directory of professional representatives maintained by the EPO
 - legal practitioners qualified to practise in patent matters in one of the EPC contracting states and having their place of business in that state.
- OJ 2013, 500, 535*
- 2.10.003** Only a person belonging to at least one of these categories may be appointed as agent for an international application filed with the EPO as receiving Office (see points 1.9.001 ff). The directory of professional representatives can be consulted on the EPO website.²⁶
- 2.10.004** Agents must always be mentioned by name in Box No. IV of the PCT request form unless they belong to an association of professional representatives registered as such with the EPO (see

²⁶ epo.org/applying/online-services/representatives.html

point 2.10.013). They can choose any address they wish so long as it is in an EPC contracting state.

NAMES	
Party	
<input checked="" type="radio"/> Agent <input type="radio"/> Common representative <input type="radio"/> Address for correspondence	
Type *	
<input type="radio"/> Legal entity <input checked="" type="radio"/> Natural person	
First Name *	<input type="text"/>
Last Name *	<input type="text"/>
Street address *	<input type="text"/>
<input type="checkbox"/> No street address applicable	
City *	<input type="text"/>
Country or territory *	<input type="text"/>
Postal Code	<input type="text"/>
Telephone *	<input type="text"/>
Please enter the full international number, prefixed with '+' [e.g. +15031234567 for the United States]. Only the following non-numerical characters are allowed: [] + - x	
Fax	<input type="text"/>
Please enter the full international number, prefixed with '+' [e.g. +15031234567 for the United States]. Only the following non-numerical characters are allowed: [] + - x	
E-mail *	<input type="text"/>
The IB will use the above e-mail address for correspondence. The RO, ISA & IPEA will do so if they provide such a service.	
Registration No.	<input type="text"/>
<div> <input type="button" value="Cancel"/> <input type="button" value="OK"/> </div>	

- 2.10.005** Natural or legal persons having their residence or principal place of business in an EPC contracting state may be represented in proceedings before the EPO by an employee. This kind of "representation" has to be distinguished from representation by a professional representative (agent) (see point 2.10.002). *Art. 27(7) PCT*
Art. 133(3) EPC

Two or more applicants – common agent and common representative

- 2.10.006** If there are two or more applicants, a professional representative (see point 2.10.003) may be appointed as "**common agent**" (see point 1.9.003). *R. 90.2 PCT*
- 2.10.007** Moreover, if two or more applicants file the application, they may also appoint one of them as "**common representative**" (see point 1.9.003). If no common agent or common representative is appointed, the applicant first named in the PCT request form who is entitled to file an application with the EPO as receiving Office is considered to be the common representative ("deemed common representative") (see point 1.9.004). *WIPO PCT Guide,*
11.005-11.006
- 2.10.008** If no common agent is appointed, any correspondence is sent to the (deemed) common representative or, if the latter has appointed

an agent, to the agent of the (deemed) common representative unless a different address is provided as address for correspondence.

How to appoint an agent, common agent or common representative

- 2.10.009** Appointment of an agent, common agent or common representative for the international phase requires a declaration to that effect. This can be made either in the PCT request (Box No. IV of the PCT request form) itself or in a separate notice ("power of attorney"). For this purpose the "PCT/Model of power of attorney" may be used, which is available on the WIPO website.²⁷ If the agent, common agent or common representative is at the same time to be appointed for the procedure in the European phase, please refer to the information in [points 2.10.019 ff.](#)
- 2.10.010** For the appointment of the agent, the common agent or the common representative to be effective, the PCT request or the power of attorney must be duly signed by (all) the **applicant(s)** for whom the agent, the common agent or the common representative is intended to act ([see points 2.10.015 ff and 2.24.001 ff.](#)).
- 2.10.011** Appointment of a (common) agent may also be effected by referring in the PCT request or in a separate notice to an existing general power of attorney deposited with the EPO.
- 2.10.012** Please note that a power of attorney may not be filed by fax or using the EPO web-form filing service ([see point 2.2.023.](#)).

[R. 90.4, 90.5 PCT](#)
[WIPO PCT Guide](#)
[11.007-11.009](#)

Is it possible to appoint an association of professional representatives?

- 2.10.013** If the applicant wishes to appoint the members of an association of professional representatives as agents, the name of the association and its registration number must be indicated in Box No. IV of the PCT request form.

[R. 90 PCT](#)
[R. 152\(1.1\) EPC](#)
[OJ 2013, 500, 535](#)





Does the address for correspondence need to be in an EPC contracting state?

- 2.10.014** If no agent has been appointed, any correspondence will be sent to the applicant. In such cases, applicants may indicate in the PCT request form an address for correspondence, which may be located anywhere in the world. This revised EPO practice for the

[Art. 27\(7\) PCT](#)
[R. 4.4\(d\), 53.4 PCT](#)
[Art. 150 EPC](#)
[OJ 2014, A99](#)

²⁷ wipo.int/pct/en/forms/pa/index.htm

use of an address for correspondence entered into force on 1 November 2014.

NAMES	
Party <input type="radio"/> Agent <input type="radio"/> Common representative <input checked="" type="radio"/> Address for correspondence	
Type * <input type="radio"/> Legal entity <input checked="" type="radio"/> Natural person	
First Name *	<input type="text" value="John"/> 
Last Name *	<input type="text" value="DOE"/>
Street address *	<input type="text" value="4567 Ipsum Street"/> 
<input type="checkbox"/> No street address applicable	
City *	<input type="text" value="City"/>
Country or territory *	<input type="text" value="GB - United Kingdom"/> 
Postal Code	<input type="text" value="555987"/>
County	<input type="text"/> 
Telephone * <input type="text" value="+44123456789"/>	
Please enter the full international number, prefixed with '+' (e.g. +15031234567 for the United States). Only the following non-numerical characters are allowed: [] + - x	
Fax	
Please enter the full international number, prefixed with '+' (e.g. +15031234567 for the United States). Only the following non-numerical characters are allowed: [] + - x	
E-mail * <input type="text" value="john@doe.com"/>	
The IB will use the above e-mail address for correspondence. The R0, ISA & IPEA will do so if they provide such a service.	
Registration No.	

Does the EPO require the filing of a power of attorney?

- 2.10.015** The EPO as receiving Office (and also as ISA, SISA and IPEA) has waived the requirement that, for the effective appointment of an agent, common agent or common representative, a signed **separate** power of attorney must be submitted to it if the PCT request is not signed by (all) the applicant(s). The waiver does not apply to a legal practitioner referred to in Article 134(8) EPC if that person is not also a professional representative. *R. 90.4(d) PCT
Art. 134(8) EPC
OJ 2010, 335
WIPO PCT Guide
11.008*
- 2.10.016** The EPO has also waived the requirement that a copy of the **general** power of attorney be attached to the PCT request or to a separate notice if appointment of a (common) agent is made by reference to a general power of attorney. *R. 90.5(c) PCT*
- 2.10.017** However, as a matter of strategy and caution, it is recommended that (common) agents and common representatives obtain explicit authorisation from (all) the applicant(s) by way of direct signature of the PCT request or by duly signed powers of attorney. *R. 90.4(e), 90.5(d),
90bis PCT*
Authorisation from each applicant is required in any case in which a withdrawal of any kind is submitted.
- 2.10.018** The EPO may require the filing of a separate power of attorney or a copy of a general power of attorney in any case of doubt as to the (common) agent's or common representative's entitlement to act. *OJ 2010, 335*

Can an agent appointed for the international phase represent an applicant in the European phase before the EPO as designated or elected Office?

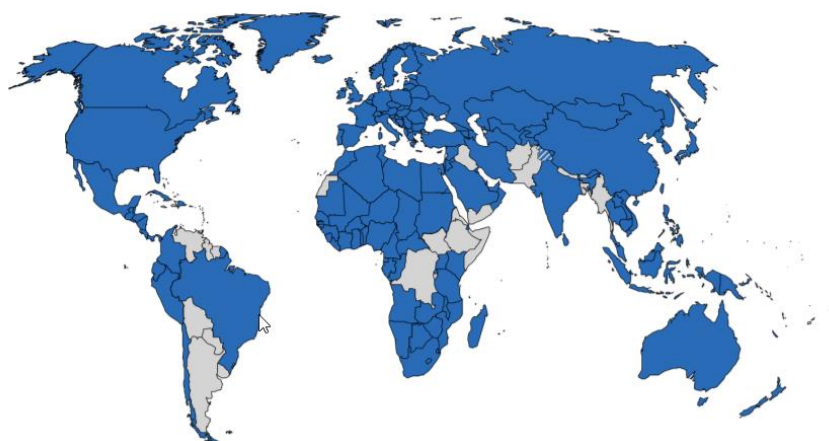
- 2.10.019** A (common) agent appointed in the PCT request as agent for an international application is appointed **only** for the international phase. This means that a professional representative authorised to act before the EPO and who acted for the applicant(s) in the international phase is not automatically considered to be the representative for the European phase. However, if the EPO is receiving Office and the agent is appointed by separate authorisation, the applicant(s) may, at the same time, indicate therein that the agent is also appointed to represent the applicant(s) before the EPO as designated or elected Office in the European phase. For the designation of an agent for the international *and* European phase at the same time, the applicant may use Form EPA/EPO/OEB 1003 available on the EPO's website.²⁸ *Art. 27(7), 49 PCT
R. 90.1 PCT
Art. 134 EPC
GL/EPO A-VIII, 1.5
WIPO PCT Guide
11.001*
- 2.10.020** If the appointment of an agent is effected by reference to an existing general power of attorney and filing of a copy (see point 2.10.011), the appointment of the agent also for the European phase must be explicitly made in a separate notice.

²⁸ [documents.epo.org/projects/babylon/eponet.nsf/0/F0E8FAC1BF4ED2A7C125737E004E4C9A/\\$File/1003_form_11_11.pdf](https://documents.epo.org/projects/babylon/eponet.nsf/0/F0E8FAC1BF4ED2A7C125737E004E4C9A/$File/1003_form_11_11.pdf)

2.11 For which states may international applications be filed?

- 2.11.001** An international application may seek patent or another form of protection (utility model, for example) for any PCT contracting state.

*Art. 4(1)(ii),
11(1)(iii)(b) PCT
R. 4.9(a), (b) PCT
Art. 153(1) EPC
WIPO PCT Guide
5.052-5.053*



- 2.11.002** Upon filing of the PCT request, the applicant will obtain automatic and all-inclusive coverage of all designations available under the PCT on the international filing date, in respect of every kind of protection available and in respect of both regional and national patents. The (automatic) designation of "EP" covers all EPC contracting states for which the PCT and the EPC are in force on the filing date of the international application.
- 2.11.003** A decision on the EPC contracting states in which protection by way of a European patent is actually being sought need not be made until the application enters the European phase (see points 5.1.008 ff). It is important to note that, if a state accedes to the EPC after the international filing date, the EPO cannot act as a designated Office for the EPC contracting state concerned and no European patent can be obtained for that state. In this respect, the date of entry into the European phase is irrelevant.

Non-designation for reasons of national law

- 2.11.004** For reasons of national law, check boxes in Box No. V of the PCT request form provide for exceptions to the otherwise automatic designation of Germany (DE), Japan (JP) and the Republic of Korea (KR). Selecting the check box for these designations is **not** considered as withdrawal of a designation, but as non-designation of the state(s) concerned.
- 2.11.005** According to the national law of these states, the filing of an international application which contains the designation of that state and claims the priority of an earlier national application filed in that state (for Germany: for the same kind of protection) will have the result that the earlier national application ceases to have effect, with the same consequences as the withdrawal of the earlier national application. To avoid this effect, the appropriate

*R. 4.9(b) PCT
WIPO PCT Guide
5.053*

box must be selected (Box No. V of the PCT request form). More information on "self-designation" can be obtained from the national patent offices concerned.

DESIGNATIONS

The filing of this request constitutes under Rule 4.9(a), the designation of all Contracting States bound by the PCT on the international filing date, for the grant of every kind of protection available and, where applicable, for the grant of both regional and national patents.

► Designations

Exclude designations

Add parent application or patent grant for a designation

☐ DE Germany is NOT designated for any kind of national protection

☐ JP Japan is NOT designated for any kind of national protection

☐ KR Republic of Korea is NOT designated for any kind of national protection

Cancel Update

2.11.006 As regards the EPC contracting states, the problem of self-designation exclusively concerns Germany (DE), and only if protection via the grant of a **national patent** in Germany is sought, i.e. if the application actually enters the German national phase. The designation of Germany for the purposes of a **European patent** is not considered a self-designation and is thus not affected. Consequently, there is no reason for withdrawing the automatic designation of EP. If a non-designation of Germany is not indicated upon filing, the international application can still enter the German national phase; however, if this is effected, the earlier German national application will be deemed withdrawn.

2.11.007 The national law of a number of EPC contracting states stipulates that **only a European patent** may be obtained for these states on the basis of an international application. The countries which close off the route to a national patent in this way were, on 1 January 2022, Belgium (BE), Cyprus (CY), France (FR), Greece (GR), Ireland (IE), Latvia (LV), Lithuania (LT), Monaco (MC), Malta (MT), Netherlands (NL), San Marino (SM) and Slovenia (SI).

Art. 45(2) PCT

2.11.008 There is a similar situation with regard to Montenegro as an "extension state" (see point 2.12.001 ff.): as there is no national phase before its competent authority (Ministry of Economic Development – Directorate for Internal Market and Competition), protection based on an international application is possible only through extension of a European patent to its territory. Applicants filing an international application who wish to obtain patent protection in Montenegro therefore have to enter the regional phase before the EPO and then extend the granted European patent to Montenegro.

*PCT Newsletter
1/2019, 1*

2.12 Extension states

- 2.12.001** With some European states which are not a party to the EPC and thus not "included" in the designation "EP", the European Patent Organisation has concluded what are known as "extension agreements". Pursuant to such agreements and the relevant national law, it is possible for applicants to extend European patent applications and patents to extension states, where the extended patents will confer essentially the same protection as patents granted by the EPO for the current 38 member states of the European Patent Organisation. Valid extension requires firstly that the applicant submit a request for extension and pay the extension fee(s) in due time, i.e. within the period for performing the acts required for entry of an international application into the European phase or within six months from the date of publication of the international search report, whichever period expires later (see points 5.8.012 ff). A further requirement is that, on the international filing date, the extension agreement has to be in force and the extension state must both be a PCT contracting state and be designated for a national patent in the international application. *GL/EPO A-III, 12.1-12.5*
- 2.12.002** The extension states listed below were already PCT contracting states on the date of entry into force of the extension agreements. Moreover, as from 1 January 2004, all PCT contracting states are automatically designated for a national and, where applicable, a regional patent (see point 2.11.002).
- 2.12.003** On 1 January 2022, extension agreements were in force with:
- Bosnia and Herzegovina (BA) (since 1 December 2004); *OJ 2004, 619*
 - Montenegro (ME) (since 1 March 2010). *OJ 2010, 10*
- 2.12.004** As to the extension of a European patent to the Republic of Montenegro (ME) after its declaration of independence on 3 June 2006 but before entry into force of the extension agreement on 1 March 2010, please refer to the information in the Official Journal. *OJ 2007, 406*
- 2.12.005** The extension agreements with Albania (AL), Croatia (HR), Latvia (LV), Lithuania (LT), North Macedonia (MK), Romania (RO), Serbia (RS) and Slovenia (SI) terminated when these states acceded to the EPC. **The extension system continues to apply after the relevant termination date for all applications filed prior to the date on which the extension agreement concerned terminated.** *OJ 2002, 463
OJ 2003, 1
OJ 2004, 481
OJ 2005, 299
OJ 2007, 637
OJ 2008, 507
OJ 2010, 96, 394*
- 2.12.006** In view of the time limit for paying extension fees (see point 2.12.001), it is not necessary to take a decision on the states for which extension is sought – or pay the extension fees due accordingly – prior to the application's entry into the European phase (see points 5.8.012 ff). *OJ 2009, 603*

2.13 Validation states

- 2.13.001** In addition to the extension agreements, the European Patent Organisation has concluded validation agreements with a number of states which are not a party to the EPC and thus not included in the designation "EP" (validation states). These validation agreements, unlike extension agreements, are not limited to European states. Pursuant to such agreements and the relevant national law, it is possible for applicants to validate European patent applications and patents in validation states, where the validated patents will confer essentially the same protection as patents granted by the EPO for the current 38 member states of the European Patent Organisation. *GL/EPO A-III, 12.1-12.5*
- 2.13.002** In order to validate a European patent application or patent in a validation state, an applicant has to submit a request for validation and pay the validation fee in due time, i.e. either within the period for performing the acts required for entry of an international application into the European phase or within six months from the date of publication of the international search report, whichever period expires later (see points 5.8.012 ff). A further requirement is that, on the international filing date, the validation agreement has to be in force and the validation state must both be a PCT contracting state and be designated for a national patent in the international application. In view of the time limit for paying validation fees, there is no need to take a decision on the states for which validation is sought – or pay the validation fees due accordingly – prior to the application's entry into the European phase (see points 5.8.012 ff). *OJ 2015, A19*
- 2.13.003** On 1 January 2022, validation agreements were in force with:
- Morocco (since 1 March 2015); *OJ 2015, A18, A20; OJ 2016, A5*
 - Republic of Moldova (since 1 November 2015); *OJ 2015, A84, A85; OJ 2016, A67*
 - Tunisia (since 1 December 2017); *OJ 2017, A84, A85*
 - Cambodia (since 1 March 2018). *OJ 2018, A15, A16*

2.14 How can an applicant claim the priority of an earlier application?

- 2.14.001** A declaration in an international application claiming the priority of one or more earlier applications filed in or for any state party to the Paris Convention for the Protection of Industrial Property ("Paris Convention") or in or for any member of the World Trade Organization (WTO) that is not party to the Paris Convention must always indicate the date on which the earlier application was filed, the state or states in which it was filed and the application number(s) under which it was filed. If the earlier application was a regional one, it suffices to give the name of the patent-granting authority under the regional agreement – i.e. "EP" in the case of a *Art. 2(i), 8(1) PCT
R. 2.4, 4.10 PCT
OJ 2007, 692
WIPO PCT Guide
5.007,
5.057-5.071,
6.038-6.044*

European application – instead of indicating the states party to the regional agreement (Box No. VI of the PCT request form).

2.14.002 Priority from an application filed in or for a WTO member that is not party to the Paris Convention may only be claimed in the procedure before the EPO as designated or elected Office for an application filed on or after 13 December 2007. *GL/EPO A-III, 6.2*

2.14.003 The applicant claiming the priority of an earlier application must be either the applicant who filed it or that applicant's successor in title. If the earlier application or the priority right was transferred to the applicant, that transfer must have taken place before the filing date of the international application (Box No. VIII (iii) of the PCT request form) and must be valid under the applicable national provisions. For example: *GL/EPO A-III, 6.1
OJ 2014, A33
PCT Newsletter
1/2022, 8*

- The earlier application from which priority is claimed names X as applicant. The international application names company A as applicant. X must have validly transferred the earlier application or the priority right to A before the filing date of the international application.

2.14.004 Where joint applicants file an international application and claim the priority of an earlier application, it is sufficient that one of them is the applicant who filed the earlier application or that applicant's successor in title. Since the international application has been filed jointly – which shows that the applicant who filed the earlier application consents – there is no need for a special transfer of priority right to the other (additional) applicant(s). For example:

- The earlier application from which priority is claimed names X as applicant. The international application names X and company A as applicants. A transfer of the priority right from X to A is not required.
- The earlier application from which priority is claimed names X as applicant. The international application names companies A and B as applicants. X must have validly transferred the earlier application or the priority right to either A or B before the filing date of the international application. A transfer to both A and B is not required but would also fulfil the formal requirements for claiming priority.

2.14.005 If the earlier application was filed by several applicants, all of them must be applicants for the international application or have transferred their rights to the applicant, or one of the applicants, for the international application. It is not sufficient if only one of several applicants filing the earlier application is named as applicant for the international application. For example:

- The earlier application from which priority is claimed names X, Y and Z as applicants. The international application names company A as applicant. X, Y and Z have not transferred their rights but are all named – together with company A – as applicants in the PCT request form (PCT/RO/101).

- The earlier application from which priority is claimed names X, Y and Z as applicants. The international application names company A and X as applicants. Y and Z must have validly transferred their rights to the earlier application to either A or X before the filing date of the international application.

2.14.006 As formal entitlement to priority is not examined during the international phase, proof of entitlement on the international filing date must be submitted in the proceedings before the EPO (only) if the validity of the priority right claimed becomes relevant. However, for a successor in title to enjoy a priority right in proceedings before the EPO, the earlier application or the priority right must have been transferred before the filing date of the international application and any deficiencies cannot be remedied after that, and especially not in the European phase. Applicants claiming the priority of an earlier application and planning to enter the European phase are therefore strongly advised to ensure that, as at the international filing date, all applicants who filed the earlier application are either mentioned as applicants for the international application or have validly transferred their rights to the applicant, or one of the applicants, for the international application.

2.14.007 Priority cannot be validly claimed unless the international application is filed within the priority period. "Priority period" means the period of 12 months from the filing date of the earlier application whose priority is claimed in the international application. The date of filing of the earlier application is not included in the priority period.

*WIPO PCT Guide ,
5.059*

2.15 How can an applicant request restoration of the priority right?

2.15.001 If an international application is filed after expiry of the priority period, a request for restoration of the right of priority under Rule 26bis.3 PCT may be filed with the EPO as receiving Office. A request for restoration of the right of priority may also be filed with the EPO as designated or elected Office upon entry into the European phase, but its effect will then be limited to the grant procedures before the EPO (see points 5.13.017 ff).

*Art. 8 PCT
R. 2.4, 26bis.2(a)(i),
(c)(iii), 26bis.3 PCT,
Art. 2(1)13 RFees
OJ 2007, 692
WIPO PCT Guide
5.062-5.069
PCT Newsletter
9/2015, 10,
7-8/2017, 15
2/2020, 12
R. 80.5, 82, 82quater
PCT
R. 134(1) EPC
PCT Newsletter,
3/2020, 6
PCT Newsletter,
5/2021, 12*

2.15.002 If the last day of the priority year falls on a non-working day or an official holiday of the EPO, the priority year expires on the next subsequent working day. Rule 82 PCT concerning delays due to irregularities in the mail and Rule 82quater PCT concerning delays due to force majeure or unavailability of any of the permitted electronic means of communication (see point 1.11.001 ff) are not applicable to the 12-month priority period because it is not fixed in the PCT Rules but in the Paris Convention.

2.15.003 The EPO as receiving Office may only grant a request for restoration of the right of priority if the following requirements are met:

- the international filing date is within two months from the date on which the priority period expired;
- the international application contains a claim to the priority of an earlier application or, if not, such a claim is added within time limit for filing the request for restoration;
- the request for restoration is filed within the time limit of two months from the date on which the priority period expired;
- the fee for restoration of the right of priority is paid within the same time limit, which is not extendable before the EPO as receiving Office;
- the request for restoration is supplemented by a statement explaining the reasons for failure to file the application within the priority period together with, where available, any evidence; and
- the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken by the applicant.

2.15.004 If the EPO as receiving Office intends to refuse a request for restoration of the right of priority, it will issue a notification of the intended refusal (Form PCT/RO/158) and invite the applicant to submit further evidence and/or make observations on the matter within the time limit of two months from the date of the notification. Only once this time limit has expired will a final decision be taken and issued (Form PCT/RO/159).

2.15.005 A decision by the receiving Office on a request for restoration of the right of priority is not required for the international search if the application was filed within two months from the date on which the priority period expired because in that case the priority claim may not be considered void during the international phase (see point 3.2.024). Where the priority claim in question is the only or the earliest one in the international application, it continues to serve as the basis for the calculation of all time limits during the international phase, including the time limits for entry into the national phases, i.e. also into the European phase.

*R. 26bis.2(c)(iii) PCT
WIPO PCT Guide
5.062*

2.15.006 If the applicant has not requested restoration of the right of priority in the procedure before the EPO as receiving Office or if the request for restoration has been rejected by the latter, the applicant may file a new request in the national phase, i.e. in the procedures before the EPO (see points 5.13.017 ff) and any other designated Office that has not made a reservation as to the applicability of Rules 49ter.1 and 49ter.2 PCT.

*R. 49ter.1 and
49ter.2 PCT*

2.15.007 If the EPO as receiving Office has granted a request for restoration, that decision is valid and will not be reviewed in the procedure before the EPO as designated Office (see points 5.13.020-5.13.021). If no reservation applies, that positive

decision will, as a rule, also be accepted by other designated Offices.

- 2.15.008** Information on the Offices that have made a reservation can be found on the WIPO website.²⁹

2.16 Does the priority document have to be filed?

- 2.16.001** Where the applicant claims the priority of an earlier application, a certified copy of that earlier application ("the priority document") must be filed with the receiving Office or the International Bureau within 16 months after the priority date. However, if the earlier application was filed with the receiving Office, the applicant may request that the receiving Office transmit a certified copy of the earlier application to the International Bureau. For that purpose, a check box is provided in Box No. VI of the PCT request form.
- R. 17.1(a), (b) PCT
WIPO PCT Guide
5.070*
- 2.16.002** If the EPO as receiving Office is requested to prepare and transmit a certified copy of an earlier application to the International Bureau, a fee is due (see point 2.26.007). However, no fee is due if the IB is requested to retrieve a priority document via DAS and it is available there (see point 2.16.003). If no request via DAS is present, the EPO as receiving Office does not include, free of charge, a copy of an earlier application in the file of an international application – even if that earlier application was a European application or an international application filed with the EPO as receiving Office.
- R. 17.1(b) PCT
R. 17.1(b-bis) PCT
Art. 3(1) RFees
OJ 2019, A27
OJ 2021, A42, A43*
- 2.16.003** Where the earlier application was filed as a national application with a national office that participates in the Digital Access Service (DAS),³⁰ the IB may be requested to obtain a certified copy of the earlier application from DAS. For that purpose a check box and a text field for the required access code are provided in Box No. VI of the PCT request form. Similarly, where the earlier application was a European patent application filed on or after 1 November 2018, the IB can be asked to obtain a certified copy via DAS since the EPO started to participate in DAS for Euro-direct filings on that date. From 1 April 2019, it is also possible to request retrieval of a certified copy via DAS where the international application claims priority from a previous international application filed with the EPO as receiving Office.
- R. 17.1(b-bis) PCT
OJ 2019, A27
PCT Newsletter
12/2010, 7
WIPO PCT Guide
5.070A-5.070C*
- 2.16.004** A priority document issued in paper form also needs to be submitted in that form to the EPO to ensure the validity of its certification. For that reason, it may not be filed by fax or using the EPO web-form filing service. On the other hand, priority documents issued in electronic form are accepted only if they are digitally signed by the issuing authority and if that signature is also accepted by the EPO. At present, the Online Filing software and Online Filing 2.0 support the submission of priority documents
- R. 17.1(a),
(b) PCT
PCT Newsletter
12/2010, 7
OJ 2021, A42, A43*

²⁹ wipo.int/pct/en/texts/reservations/res_incomp.html

³⁰ For a list of the participating offices, see wipo.int/das/en/participating_offices.html.

issued in electronic form (see point 2.2.031). Furthermore, during the international phase before the EPO as receiving Office, electronic priority documents can be submitted together with filing the PCT/RO/101 to the EPO or subsequently to the IB using ePCT.

2.17 Does the EPO acting as receiving Office issue certified copies of international applications?

- 2.17.001** Where the applicant needs a certified copy of an international application which was filed with the EPO as receiving Office, a request may be filed with the EPO together with the payment of the relevant fee (see point 2.26.007). The certified copy will be issued on paper.

2.18 Which is the competent International Searching Authority (ISA) when the EPO acts as receiving Office?

- 2.18.001** If an international application is filed with the EPO acting as receiving Office, the **EPO is the only competent ISA**. Therefore, this need not be entered in Box No. VII of the PCT request form.

Art. 16 PCT
R. 4.1(b)(iv), 4.14bis PCT
Art. 152 EPC
Agreement EPO-WIPO, Art. 3(1)
OJ 2017, A115
OJ 2020, A35, A68
WIPO PCT Guide, Annex C

2.19 Is it possible to submit informal comments on earlier search results? What is PCT Direct?

- 2.19.001** On 1 November 2014, the EPO launched the PCT Direct service for international applications filed with the EPO as receiving Office. On 1 July 2015, this service was extended to international applications filed with all the other receiving Offices. Under PCT Direct, an applicant filing an international application with any receiving Office and claiming priority from an earlier application already searched by the EPO may, together with the request form, file a letter containing informal comments aimed at overcoming objections raised in the search opinion established by the EPO for

OJ 2014, A89
OJ 2017, A21

the priority application³¹ (see point 3.2.026). The EPO as ISA will take informal comments submitted under PCT Direct into account when establishing the ISR and WO-ISA.

INTERNATIONAL SEARCH	
ISA/EP - European Patent Office [EP0]	
Select earlier application *	▼
EP - 06 Apr 2021 - 12345678.2	
<input checked="" type="radio"/> The ISA is requested to take into account the results of the earlier search <input type="radio"/> The ISA is NOT requested to take into account the results of the earlier search	
<input type="checkbox"/> The earlier application selected above is the same, or substantially the same, as the international application, except that it may have been filed in a different language.	
Availability of document[s] to the ISA *	▼
Other document[s] attached	
Add other Document	
Document Type *	▼
Other documents a copy of the results of the earlier search a copy of the earlier application a translation of the earlier application into a language which is accepted by the ISA a translation of the results of the earlier search into a language which is accepted by the ISA a copy of any document cited in the results of the earlier search Applicant letter to ISA concerning earlier search ('PCT Direct')	
Use of earlier search and classification results	Add reimbursement instructions

2.20 Can an applicant request that an earlier search be taken into account?

- 2.20.001** The applicant may file a request with the receiving Office that the result of an earlier search carried out by the EPO or by any other office be taken into account. This option can be selected in the PCT request form, continuation of Box No. VII (item 1). A refund of the international search fee is, however, granted only under the conditions set out in point 2.21.001.

*R. 4.12 PCT
WIPO PCT Guide
5.073*

³¹ Generally, PCT Direct cannot be used where an international-type search was carried out on the earlier application. However, for the Netherlands and Belgium, the international-type search report established by the EPO is accompanied by a written opinion and PCT Direct can be used in those cases.

2.21 In what circumstances is it possible to obtain a refund of the international search fee?

- 2.21.001** If the search for the international application is based entirely or partly on an earlier search report already prepared by the EPO on an application whose priority is validly claimed (Box No. VI of the PCT request form), the applicant may obtain a refund of the international search fee. The EPO acting as ISA decides whether the requirements are met and, where applicable, refunds the applicable amount (see point 3.1.027).³² Where priority is claimed from an application for which the EPO carried out a search, the continuation section of Box No. VII in the PCT request does not need to be filled in.
- 2.21.002** No refund is made for any search other than a search carried out by the EPO on an application from which the right of priority is validly claimed.

*R. 4.12, 16.3, 41 PCT
Art. 9(2) RFees
Agreement EPO-
WIPO Art. 5(2)
OJ 2009, 99
OJ 2017, A115
OJ 2019, A5, A82
GL/EPO A-X, 10.2.3
WIPO PCT Guide
5.073*

2.22 Applications containing a reference to biological material

- 2.22.001** Under the PCT, the question as to whether a reference to deposited **biological material** must be included in an international application is left to the national law of the designated states. The PCT, however, prescribes the contents of a required reference and sets the time limit for providing such a reference.
- 2.22.002** Each designated Office decides whether a reference to biological material in accordance with the provisions of the PCT satisfies the requirements of its national law as to the content and the time limit for furnishing the reference. However, a national requirement may be added and become a PCT requirement upon notification to the IB. The EPO has made use of this possibility (see points 2.22.003-2.22.004).
- 2.22.003** The EPO has notified the IB that the following additional matter should be indicated by an applicant wishing to enter the European phase:
- To the extent available to the applicant, relevant information on the characteristics of the biological material should be mentioned in the application as filed, and where the biological material has not been deposited by (one of) the applicant(s) but by someone else, the name and address of the latter person (the depositor) must be stated in the international application. Moreover, a document must

*R. 13bis PCT
R. 31-34 EPC
OJ 2010, 498
Section 209 AI
WIPO PCT Guide
11.075-11.087
PCT Newsletter
11/2014, 13*

*R. 13bis.4,
R. 13bis.7 PCT
R. 31(1)(d) EPC*

³² New refund procedures entered into force at the EPO on 1 April 2019 and became mandatory as of 1 October 2019; see OJ 2019, A82.

be submitted to the IB within 16 months from the priority date in which the depositor:

- has authorised the applicant to refer to the biological material and
- has given unreserved and irrevocable consent to the deposited material being made available to the public.

2.22.004 Such authorisation is, however, not required if the depositor's rights to the deposited material are transferred to the applicant by the filing date of the international application at the latest. In that case, the document containing the transfer must be submitted instead. For further information see Annex L to the WIPO PCT Guide.

2.22.005 If any requirement concerning a reference to biological material is not met within 16 months from the priority date of the application, this **cannot** be remedied in the procedure before the EPO as a designated Office, i.e. upon entry into the European phase. As a consequence, the international application may be refused for insufficient disclosure in the course of the examination proceedings before the EPO as designated/elected Office.

2.22.006 Details of deposited biological material which are not included in the description should be supplied on a separate form (PCT/RO/134) (Box No. IX, check box No. 7 in the PCT request form). This form must likewise be used if the applicant wishes samples to be made available only to an expert.

2.22.007 The furnishing of samples of biological material by the EPO takes place in conformity with Rule 13bis PCT and Rule 33 EPC. As a consequence, if the requirements of Rule 33 EPC are met, requests for the furnishing of samples of biological material are certified by the EPO in its capacity as designated Office vis-à-vis third parties as from international publication in an EPO language, i.e. during the international phase. The EPO has notified the IB that if the applicant wishes the biological material to be made available only by the issue of a sample to an expert nominated by the requester, the applicant must inform the IB accordingly before completion of the technical preparations for publication of the international application, where such publication takes place in one of the EPO's official languages. If the international application was not published in an official language of the EPO, notification of the expert solution may be submitted until completion of the technical preparations for publication of the translation of this application by the EPO as designated/elected Office. The fact that this solution has been chosen will be published by WIPO on its PATENTSCOPE website and/or, if applicable, on the front page of the published translation of the application.

R. 13bis.6 PCT
R. 32(1), 33 EPC
OJ 2010, 498
OJ 2017, A60, A61
PCT Newsletter
7-8/2010, 6
11/2011, 5

2.23 Applications disclosing nucleotide and/or amino acid sequences

- 2.23.001** If the international application discloses one or more **nucleotide and/or amino acid sequences**, it must contain a sequence listing, which is to be drawn up in compliance with the standard prescribed in Annex C of the Administrative Instructions under the PCT and published on the WIPO website. More specifically, the sequence listing must comply with the version of WIPO Standard ST.25 which is applicable on the date on which the sequence listing is submitted.³³ For international applications filed on or after 1 July 2022, the applicable standard before the EPO is WIPO ST.26. Details of the practice which will be applied for applications filed on or after 1 July 2022 are provided in the decision of the President of the EPO dated 9 December 2021 on the filing of sequence listings and the explanatory notice from the EPO (see [OJ 2021, A96 and A97](#)). The following paragraphs describe the practice applicable for international applications filed up until 30 June 2022.
- R. 5.2, 13ter.1 PCT
OJ 2011, 372
OJ 2013, 542
OJ 2021, A96, A97
Section 101, 204,
207, 208, 707(a) and
(a-bis) AI
Annex C AI
WIPO PCT Guide
5.099-5.104,
11.088
PCT Newsletter
7-8/2009, 10
12/2010, 5
12/2015, 9
10/2021, 2*
- 2.23.002** Any sequence listing not contained in the international application as filed will, if not allowable as an amendment under [Article 34 PCT](#) (see [points 4.2.003 ff](#)), not form part of the international application.
- 2.23.003** Tables relating to sequence listings (if there are any) must be included as an integral part of the description in the same format as the remainder of the application. Any pages containing such tables relating to sequence listings count as regular pages of the description for which full page fees are payable (see [point 2.26.006](#)). Where the sequence listing contains free text, that free text must be repeated in the main part of the description in the language thereof and is taken into account for the calculation of the page fee part of the international filing fee (see [point 2.26.006](#)).
- R. 5.2(b) PCT*
- 2.23.004** An international application containing a sequence listing can be filed on paper or in electronic form. If it is filed on paper, the sequence listing must also be filed on paper. If it is filed in electronic form, the sequence listing must be filed in that form, too, either in image format (PDF) or, preferably, in text format (.txt or .app).
- 2.23.005** If an international application is filed in electronic form, a sequence listing forming part of such application and filed in text format in compliance with Annex C is not taken into account for calculating the (page fee part of the) international filing fee (see [point 2.26.006](#)). There will be no need to file a second copy for the purposes of international search and, where applicable, international preliminary examination (see [points 3.3.011, 4.2.034](#)).

³³ wipo.int/export/sites/www/standards/en/pdf/03-25-01.pdf. In July 2022, a transition from WIPO Standard ST.25 to Standard ST.26 will take place.

- 2.23.006** If any other option for filing a sequence listing is chosen, i.e. filing on paper or in image format, the sum of the page fee part of the international filing fee is calculated taking into account each page of the sequence listing. Furthermore, if the EPO is selected as ISA, SISA and/or IPEA a sequence listing in electronic form in text format in compliance with Annex C will be required (see points 3.3.011 ff).
- R. 13ter.1 PCT
OJ 2011, 372
OJ 2013, 542
GL/PCT-EPO B-VIII, 3.2
GL/EPO E-IX.2.4.2*

2.24 Who must sign the request?

- 2.24.001** The PCT request form or, where applicable, the power of attorney **must be signed by the applicant** (Box No. X of the request form).
- R. 4.1(d), 4.15,
26.2bis(a),
51bis.1(a)(vi) PCT
WIPO PCT Guide
5.088-5.091
PCT Newsletter,
1/2020, 5*
- 2.24.002** Where there are two or more applicants, each applicant must sign the request, or each applicant for whom an agent has been appointed must sign a power of attorney (Box No. IX of the PCT request form). However, if there is more than one applicant, the EPO as receiving Office will not invite the applicant to furnish the missing signature(s) if the PCT request form is signed by **at least one of the applicants**. Any designated Office, however, may require the missing signature of any applicant who has not signed the PCT request for that designated state.
- 2.24.003** The EPO as designated Office does not require a missing signature to be submitted upon entry into the European phase.
- 2.24.004** If not the applicant but an agent has signed the PCT request form, a signed power of attorney or a copy of a general power of attorney need not be submitted since this requirement has been waived by the EPO (see point 2.10.015). However, as a matter of strategy and caution, it is recommended that agents obtain explicit authorisation from all applicants, by way of either direct signature or power of attorney (see points 2.10.017 ff).
- R. 90.3, 90.4,
90.5 PCT
OJ 2010, 335
WIPO PCT Guide
11.008*

2.25 In which language must the international application be filed?

- 2.25.001** The international application, i.e. the request, description, claim(s), drawing(s) and abstract, must be filed with the EPO as receiving Office in English, French or German. An international application filed in another language will be forwarded to the IB to act as receiving Office instead of the EPO. This means that there is no possibility to file an application with the EPO as receiving Office in any other language than is provided under Article 14(1) EPC.
- Art. 3(4)(i), 11(1)(ii) PCT
R. 12, 19.4(a)(ii) PCT
Art. 14(1), 150(2) EPC
EPC
R. 157(2) EPC
WIPO PCT Guide
5.013-5.014*

- 2.25.002** If an application is filed with the EPO as receiving Office in one of its official languages, that language will be the language of the proceedings which may not be changed either during the international phase or on entry into the European phase (see points 5.1.013-5.1.014). However, with the exception of amendments and corrections to the application, for which the language of the international application must be used, any other correspondence with the EPO may be in any of the EPO's three official languages.
- OJ 1993, 540
G 4/08
OJ 2010, 572*
- 2.26 What fees are due when filing an international application?**
- 2.26.001** For fee payments to be made during the international phase, please consult the latest information available on both the EPO³⁴ and the WIPO³⁵ websites. Furthermore, guidance for the payment of fees, expenses and prices is provided in every issue of the Official Journal.
- Art. 3(4)(iv) PCT
R. 14-16 PCT
WIPO PCT Guide
5.184-5.199
PCT Newsletter
3/2018, 8
PCT Newsletter
11/2020, 14
PCT Newsletter
12/2020, 11*
- 2.26.002** Anyone can validly make fee payments to the EPO: applicants, representatives and any other person.
- 2.26.003** For any international application the following fees are payable direct to the EPO as receiving Office:
- the transmittal fee,
 - the international filing fee and
 - the international search fee.
- WIPO PCT Guide,
Annex C(EP)*
- 2.26.004** The transmittal, international filing and search fees are payable within **one month** of receipt of the international application.
- R. 14.1(c), 15.3,
16.1(f) PCT
R. 16bis.2 PCT
PCT Newsletter
5/2015, 10*
- 2.26.005** If the application contains **more than 30 pages**, the international filing fee increases, with a fixed sum to be paid for each page in excess of 30 pages. This extra fee is considered part of the international filing fee and must be paid by the applicant together with the (basic) filing fee. The applicant should compute the extra amount independently and not wait for a communication because after expiry of the one-month time limit the missing amount may only be validly paid together with a late payment fee (see point 2.26.026).
- 2.26.006** If the application contains a sequence listing as part of the description in electronic form, the pages forming that part are not

³⁴ epo.org/applying/fees/international-fees.html

³⁵ wipo.int/pct/en/fees/

taken into account for calculating the page fee (see point 2.23.004).

- 2.26.007** Furthermore, if the applicant has requested the EPO as receiving Office to establish and transmit to the IB a certified copy of the priority document or to restore the right of priority, the fee payable in each case (fee for establishment and transmittal to the IB of a certified copy of the priority document; fee for requesting restoration of priority right) is to be paid for the benefit of the EPO as receiving Office. *R. 17.1(b), 26bis.3(d)*

Amounts of fees

- 2.26.008** The amounts of the transmittal and international search fee are set by the EPO and laid down in the EPO's current Schedule of fees and expenses published in the Official Journal and on the EPO website.³⁶ *Art. 2(1).2, 2(1).18 RFees
WIPO PCT Guide, Annex C(EP)*

- 2.26.009** The conditions for a reduction in the international search fee are set out in points 3.1.024 ff.

- 2.26.010** The amount of the international filing fee, including the page fee, is set by WIPO in Swiss francs and is specified in the Schedule of Fees which is annexed to the PCT Regulations (PCT Schedule of Fees) and forms an integral part thereof. If this fee is paid to the EPO as RO, it must be paid in euros. Due to changes in the exchange rate between the euro and the Swiss franc, the equivalent amount is changed from time to time. This is announced by WIPO in its PCT Newsletter and by the EPO in its Official Journal. The latest information about amounts can be found on both the EPO website³⁷ and the WIPO website.³⁸ The amounts payable in respect of the international filing fee, the search fee and the transmittal fee are those applicable on the date of receipt of the international application. *R. 15.3, 16.1(f), 14.1(c), 96.1 PCT
PCT Schedule of Fees
WIPO PCT Guide, Annex C(EP)*

- 2.26.011** The conditions for a reduction in the international filing fee are set out in points 2.26.020 ff.

Payment methods

- 2.26.012** All fees which are to be paid to the EPO must be paid in euros:
- by debit order from the user's deposit account using a smart card connection,
 - by credit card with immediate effect using Central Fee Payment and
- Art. 5 RFees
Point 1 ADA
OJ 2007, 626
OJ 2015, A65
OJ 2017, A72
OJ 2020, A26, A33, A60, A77, A78
OJ 2021, A61, A73*

³⁶ epo.org/applying/fees/international-fees/important-fees.html

³⁷ epo.org/applying/fees/international-fees/important-fees.html

³⁸ wipo.int/export/sites/www/pct/en/fees.pdf

- by using the bank transfer functionality in Central Fee Payment.³⁹

2.26.013 For users having a deposit account with the EPO, payment may be made by debit order. As from 1 December 2017, the EPO has moved to "online-only" management of users' deposit accounts. This means that since that date, all debit orders must be filed in an electronically processable format (XML) using one of the accepted online filing services. A debit order can also be submitted in electronic form via the EPO's Online Fee Payment or via Central Fee Payment. If a debit order is submitted on paper, via web-form filing or otherwise, it is invalid and will not be carried out.

*Point 1 ADA
OJ 2021, A61*

2.26.014 **Automatic debiting** has been available for any fee payments to the EPO as receiving Office, ISA and IPEA since 1 April 2015. An overview of the automatic debiting procedure for fees due in proceedings before the EPO as receiving Office, ISA and IPEA under the PCT can be found on the EPO website.⁴⁰ Payment of fees by **credit card** became possible on 1 December 2017. Details on payments by credit card are provided on the EPO website.⁴¹ Payment by **cheque** was abolished by the EPO with effect from April 2008.

OJ 2021, A61, A73

2.26.015 The date to be considered as the date on which a payment is made is established in accordance with the EPO's Rules relating to Fees.

Art. 7(1) RFees

2.26.016 The dedicated EPO website⁴² as well as every issue of the Official Journal provide guidance on the payment of fees.

³⁹ Details on payment methods are provided on the EPO website:
epo.org/applying/fees/payment.html

⁴⁰ epo.org/applying/fees/payment/automatic-debiting-procedure.html

⁴¹ epo.org/applying/online-services/fee-payment/credit-card-faq.html

⁴² epo.org/applying/fees/payment.html

Refund procedure

- 2.26.017** Under the fee refund procedure, users are required to file clear and up-to-date refund instructions in an electronically processable format (XML). Filing of electronically processable refund instructions is mandatory since 1 October 2019. Under this procedure, applicants may also indicate the account of any third party for the purpose of fee refunds.
- 2.26.018** In the case of international applications, the refund instructions must be submitted via EPO Online Filing, Online Filing 2.0 or ePCT, using Form PCT/RO/101. They may also be filed using the PCT-SFD or PCT-DEMAND plug-in in EPO Online Filing or Online Filing 2.0.

OJ 2019, A82

FEES

For detailed information on methods of payment of fees to the EPO, please see the page 'Making payments' on the EPO website.

Show fees Preview fee sheet

Payment method Credit card	
Deposit account number	
Name	

Payment method	▼
Credit card	

☒ Any reimbursement to be made to the deposit or current account with the RO indicated below.

Deposit account number *
28

Name *

Cancel Update

FEES

Add fees

REIMBURSEMENT INFORMATION

Any reimbursement to be made to the deposit or current account with the RO indicated below

Deposit account number *
28

Name *

Cancel Update

- 2.26.019** Refunds are made to a deposit account held with the EPO or to a bank account. Refunds cannot be made by cheque or to credit cards. If the EPO cannot make a refund to a deposit account held with it, it will invite the party to the proceedings to claim the refund

OJ 2021, A73

via its website.⁴³ To do so, it will send two separate communications:

- the first communication will inform the party of the pending refund and that it can be claimed online;
- the second will contain a refund code required to identify and claim the refund.

When do fee reductions apply?

2.26.020 The international filing fee is reduced by 90% if the requirements stipulated in item 5 of the PCT Schedule of Fees are met. If there are several applicants, each of them must satisfy the requirements for the reduction to apply.

*Item 5 PCT
Schedule of Fees
WIPO PCT Guide
5.188
PCT Newsletter
6/2015, 13*

2.26.021 In respect of applicants entitled to file an international application with the EPO as receiving Office (see point 2.1.002), the reduction applies if the applicant is a natural person who is a national of and resides in one of the following states: Albania (AL), Bulgaria (BG), Croatia (HR), Czech Republic (CZ), Estonia (EE), Greece (GR), Hungary (HU), Latvia (LV), Lithuania (LT), Malta (MT), North Macedonia (MK), Poland (PL), Portugal (PT), Romania (RO), Serbia (RS), Slovakia (SK), Slovenia (SI), Turkey (TR). On 1 January 2022, these EPC/PCT contracting states fell within the criteria of item 5(a) of the PCT Schedule of Fees.

2.26.022 If the application is filed by more than one applicant, only one must be a national and resident of one of the EPC/PCT contracting states listed above, but each applicant must fulfil the criteria mentioned under item 5 of the PCT Schedule of Fees.

2.26.023 A list of states whose nationals/residents satisfy the requirements for a reduction is published in the PCT Newsletter and on the WIPO website.⁴⁴

2.26.024 With the EPO acting as receiving Office, there is a reduction in the international filing fee if the application is filed in **electronic form** (see point 2.2.003). The level of the reduction depends on the format in which the application is filed. The details can be found on the EPO website⁴⁵ and in the WIPO PCT Guide, Annex C (EP).

*WIPO PCT Guide
5.189*

2.26.025 The PCT request form contains a Fee Calculation Sheet which applicants are asked to use for calculating fees. For possible reductions of the international (supplementary) search and preliminary examination fees when the EPO acts as ISA, SISA and/or IPEA, see points 3.1.024, 3.4.013 and 4.1.060.

⁴³ epo.org/applying/online-services/fee-payment.html#tab4
epo.org/fee-payment-service/en/login

⁴⁴ wipo.int/export/sites/www/pct/en/fees/fee_reduction_january.pdf

⁴⁵ epo.org/applying/fees/international-fees/important-fees.html

What happens if fees are paid late?

- 2.26.026** If no fees are paid within the prescribed time limits (see point 2.26.004), or if the amounts paid are not sufficient to cover the fees due, the EPO invites the applicant to pay the missing amount together with a late payment fee of 50% of the amount of unpaid fees but at least an amount equal to the transmittal fee.
- 2.26.027** The late filing fee may not exceed the amount of 50% of the international filing fee as specified in the PCT Schedule of Fees, no account being taken of any fee due for each page of the international application in excess of 30 pages.
- 2.26.028** If the applicant fails to pay the prescribed fees together with the late payment fee within one month of the date of the invitation, the international application will be considered withdrawn and the receiving Office will so declare.

Art. 14(3)(a) PCT
R. 16bis PCT
OJ 1992, 383
WIPO PCT Guide
5.193-5.196
PCT Newsletter
5/2015, 10

Chapter 3 – The EPO as an International Searching Authority (ISA) and a Supplementary International Searching Authority (SISA)

3.1 General

3.1.001 Since 1 July 2010 the EPO, in its capacity as an International Authority under the PCT, has acted not only as an ISA and an IPEA, but also as a Supplementary International Searching Authority (SISA). This chapter first sets out the procedure before the EPO acting as ISA, and at the end provides information on the procedure before the EPO acting as SISA (see points 3.4.001 ff). Chapter 4 provides information on the procedure before the EPO acting as IPEA.

3.1.002 The Agreement EPO-WIPO sets out particulars of the procedures before the EPO as an International Authority. The current agreement entered into force on 1 January 2018. Annex A of the agreement was revised with effect from 1 April 2018; Annex D, Part I, was last revised with effect from 1 July 2020 and Annex D, Part II, paragraph 4, was last revised with effect from 1 April 2020.

QJ 2017, A115
QJ 2018, A24
QJ 2020, A35, A68

What is the role of the EPO as ISA?

3.1.003 For every international application, the EPO as ISA issues either an International Search Report (ISR) and a Written Opinion of the International Searching Authority (WO-ISA) under Chapter I PCT or, in exceptional cases, a Declaration of Non-Establishment of International Search Report and a WO-ISA indicating that the ISA is not required to perform a search or cannot perform a meaningful search (see points 3.2.005 ff).

Art. 17(2), 18 PCT

3.1.004 The ISR contains, among other things, the citations of the prior art documents considered relevant, the classification of the subject-matter of the invention and an indication of the fields searched.

R. 43 PCT

3.1.005 The WO-ISA provides the applicant with a preliminary, non-binding opinion on the issues of novelty, inventive step and industrial applicability. This allows the applicant to assess, already at the search stage, whether to proceed directly to the national/regional phase or to file a demand under Chapter II PCT in order to overcome objections raised in the WO-ISA and possibly receive a positive IPER. However, before taking a decision on filing a demand for international preliminary examination, applicants are advised to consider carefully the information regarding the usefulness of the procedure under Chapter II PCT (see points 4.1.001 ff).

When is the EPO competent to act as ISA?

- 3.1.006** Although the EPO's competence to act as ISA is, in principle, **universal**, i.e. not restricted to international applications from e.g. EPC contracting states, its competence to act as ISA for an international application is, as set out below, not automatically applicable (see points 3.1.007 ff).

[Art. 16 PCT](#)
[R. 35 PCT](#)
[Art. 152 EPC](#)
[Agreement EPO-
WIPO, Art. 3\(1\)](#)
[OJ 2017, A115](#)
[OJ 2018, A24](#)
[WIPO PCT Guide
7.002](#)

Specification by the receiving Office

- 3.1.007** The EPO can act as ISA only on condition that the receiving Office where the application was filed has specified the EPO as ISA.
- 3.1.008** Since most receiving Offices have specified the EPO, only states that had not (yet) specified the EPO as ISA (and IPEA) on 1 January 2022 are mentioned here: United Arab Emirates (AE), Australia (AU), Canada (CA), Democratic People's Republic of Korea (KP), Republic of Korea (KR) and Papua New Guinea (PG). Up-to-date information is available on the WIPO website (see point 1.3.005).

- 3.1.009** If the IB is acting as receiving Office, the EPO is competent as ISA/IPEA if the international application could have been filed with a receiving Office which had specified the EPO as ISA/IPEA at the date of filing.

[Agreement EPO-
WIPO, Art. 3\(3\)](#)
[OJ 2017, A115](#)
[OJ 2018, A24](#)
[OJ 2020, A35, A68](#)

Lifting of the competence limitation

- 3.1.010** As a result of an amendment to the previous Agreement between the EPO and WIPO under the PCT, any national or resident of the USA filing an international application on or after 1 January 2015 with the USPTO or the IB as receiving Office can select the EPO as ISA or IPEA, irrespective of the technical field of the international application. This amendment is reflected in the current agreement which entered into force on 1 January 2018. It should, however, be noted that the Notice from the EPO dated 1 October 2007 concerning business methods remains applicable (see point 3.3.005).

[OJ 2017, A115](#)
[OJ 2018, A24](#)
[OJ 2020, A35, A68](#)

Choice of ISA and consequences

- 3.1.011** If the receiving Office has specified more than one ISA, the applicant must indicate the chosen ISA in the PCT request (Box No. VII) and in the Fee Calculation Sheet (Box No. 2). Only one ISA may be selected. For example, the EPO may be chosen as ISA for applications filed with the USPTO and for applications in English filed with the JPO as receiving Office.

[R. 4.1\(b\)\(iv\),
4.14bis PCT](#)

- | | | |
|----------------|--|---|
| 3.1.012 | Applicants considering their choice of ISA are advised to bear in mind that the EPO will act as an IPEA only if the international search was carried out by the EPO itself or by another European ISA . On 1 January 2022, the EPO, the Austrian, Finnish, Spanish, Swedish and Turkish patent offices as well as the Nordic Patent Institute and the Visegrad Patent Institute were acting as European ISAs (see point 4.1.017). | <i>Agreement EPO-WIPO, Art. 3(2), Annex A(i)</i>
<i>OJ 2017, A115</i>
<i>OJ 2018, A24</i>
<i>OJ 2020, A35, A68</i> |
| 3.1.013 | If the EPO acts as ISA or SISA (see points 3.4.001 ff.), no supplementary European search is carried out. Therefore, no search fee will be due on entry into the European phase (see point 5.9.007). | <i>OJ 2009, 594</i> |
| 3.1.014 | If the EPO acts as IPEA, there is a reduction of 75% of the examination fee in the European phase (see point 5.10.009). | <i>Art. 14(2) RFees</i> |

When is a translation needed for the purpose of international search?

- | | | |
|----------------|--|--|
| 3.1.015 | For the purpose of the international search by the EPO as ISA, the application must be in one of its three official languages, i.e. English, French or German . Where the international application is filed in a different language the applicant must file a translation into one of the three official languages of the EPO with the receiving Office. Such translation must be furnished within one month of the date of receipt of the international application by the receiving Office. | <i>R. 12.3 PCT</i> |
| 3.1.016 | If the application was not filed in a PCT language of publication, the language of the translation submitted for the purpose of the procedure before the EPO as ISA determines the language in which the international application is published. In any case where the language of the international publication is an official language of the EPO, that language will be the language of the proceedings in the European phase and cannot be changed. Therefore, applicants should carefully consider in which language they submit a translation for the purpose of international search. | <i>R. 48.3 PCT</i>
<i>OJ 2010, 572</i> |
| 3.1.017 | Upon receipt of payment of the international search fee, the receiving Office will promptly forward a copy of the translation and of the PCT request form ("search copy") to the EPO as ISA. | <i>Art. 12(1) PCT</i>
<i>R. 23.1(b) PCT</i> |

Language of further correspondence

- | | | |
|----------------|---|--|
| 3.1.018 | In any further correspondence with the EPO as ISA, the applicant may use any of the three official languages of the EPO (see point 2.25.002). | <i>R. 92.2(b) PCT</i>
<i>OJ 1993, 540</i> |
|----------------|---|--|

Application filed in Dutch

- 3.1.019** An exception to the translation requirements for the purpose of international search by the EPO as ISA applies only if the application was filed with the Netherlands Patent Office as receiving Office. The EPO as ISA also accepts applications drawn up in Dutch, even though it is not an official EPO language. Therefore, a translation of an international application filed in Dutch with the Netherlands Patent Office is not required for the purpose of the international search by the EPO as ISA. However, within 14 months from the priority date a translation must be filed with the receiving Office in a language of publication accepted by the receiving Office for the purpose of international publication. The ISR and WO-ISA will be established in the language of the international publication. For the above reasons, filing an application in Dutch should be carefully considered.
- R. 12.3, 12.4, 43.4, 48.3 PCT
Agreement EPO-WIPO, Annex A(ii)
OJ 2018, A17, A24
OJ 2020, A35, A68
PCT Newsletter 2/2018, 2, 5
4/2018, 4*

Who may represent the applicant before the EPO as ISA?

- 3.1.020** Applicants may be represented before the EPO as ISA by the agent appointed on filing the international application and/or having the right to practise before the receiving Office, i.e. usually the agent for the international phase (see points 1.9.002 ff).
- Art. 49 PCT
R. 83.1bis(b), 90.1(a), (b), (d) PCT
WIPO PCT Guide 11.001-11.014
PCT Newsletter 4/2008, 7*
- 3.1.021** Applicants may also appoint an agent to represent them **specifically before the EPO in its capacity as ISA**. Moreover, the agent appointed for the international phase – and thus including for the procedure before the ISA – may appoint a sub-agent to represent the applicant specifically before the EPO as ISA. All communications issued by the ISA are sent to the agent specifically appointed for the procedure before the EPO as ISA.
- 3.1.022** Any agent specifically appointed to act before the EPO as ISA must be entitled to practise before the EPO (see point 2.10.003).
- 3.1.023** The requirement in respect of filing a separate power of attorney or a copy of a general power of attorney has been waived by the EPO as ISA (see point 2.10.015).
- OJ 2010, 335*

What are the conditions for a reduction of the search fee?

- 3.1.024** The search fee⁴⁶ to be paid if the EPO acts as ISA is reduced by 75% where the applicant or, if there are two or more applicants, **each** applicant is a **natural** person who is a **national and resident of a state not party to the EPC** which on the date of filing of the application is classified as a low-income or lower-middle-income economy by the World Bank. A table listing these states can be found in Annex I to the notice from the EPO dated 7 July 2021.
- OJ 2020, A4, A35
OJ 2021, A58
GL/PCT-EPO A-III, 8.2
WIPO PCT Guide 5.188-5.190*

⁴⁶ For fee payments to be made during the international phase, refer to: epo.org/applying/fees/international-fees.html; wipo.int/pct/en/fees/.

3.1.025 The search fee to be paid if the EPO acts as ISA is also reduced by 75% where the applicant or, if there are two or more applicants, each applicant is a **natural or legal person** who, within the meaning of Rule 18 PCT, is a national and resident of a state in which a **validation agreement** with the European Patent Organisation is in force. *OJ 2021, A58*

3.1.026 The consequence of the requirement that **each applicant** must be a natural person who is a national and resident of a state **not** party to the EPC is that applicants with the nationality of or residence in an EPC contracting state for that reason alone do not fulfil the requirements for the reduction in the search fee (and the supplementary search fee as well as the fee for international preliminary examination). It is, however, possible that they fulfil the requirements for the reduction in the international filing fee (see point 2.26.020) and the handling fee (see point 4.1.059). For fee payments to be made during the international phase, please consult the latest information available on both the EPO⁴⁷ and the WIPO⁴⁸ websites. Furthermore, guidance for the payment of fees, expenses and prices is provided in every issue of the Official Journal.

When is the search fee refunded?

3.1.027 Where the EPO can base the ISR on an earlier search that it has carried out for an application whose **priority is validly claimed** for the international application, the international search fee paid will be refunded in part or in full, depending on the extent to which the EPO benefits from that earlier search (see point 2.21.001). *R. 4.12, 12bis, 16.3, 41.1 PCT, OJ 2009, 99, OJ 2019, A5, A82, WIPO PCT Guide 5.073*

3.1.028 No refund is made for an earlier search that was not carried out by the EPO itself and/or if priority has not been validly claimed (see point 2.21.001).

3.2 The procedure before the EPO as ISA

General

3.2.001 The objective of the international search is to discover relevant prior art. The PCT defines prior art as consisting of everything which has been made available to the public anywhere in the world by means of a written disclosure. Prior art is relevant if it is of assistance in determining whether the claimed invention is new and involves an inventive step. *Art. 15, 27(5) PCT, R. 33.1 PCT, GL/PCT-EPO B-II, 2, B-III, 1*

3.2.002 The definition of prior art in Rule 33 PCT is valid exclusively for the international phase of the procedure. This means that, during the European phase, the EPO applies the criteria applicable under the EPC for determining the relevant prior art. However, the scope of

⁴⁷ epo.org/applying/fees/international-fees.html

⁴⁸ wipo.int/pct/en/fees/

an international search is equivalent to that of a European search. This means that there is **no difference between an international and a European search**, either in respect of the method and quality of the search or in respect of the sources of prior art searched.

- 3.2.003** The EPO conducts the international search in accordance with the ISPE Guidelines (see point 1.4.004). In a number of cases, these guidelines leave it to the ISA concerned to choose between two or more (policy) options. A list of the options chosen by the EPO is provided in the PCT-EPO Guidelines and the annex to this Guide. *GL/PCT-EPO, General Part, 3.2*
- 3.2.004** In accordance with the principle of supplementary application of the EPC, the EPO as ISA applies the Guidelines for Examination in the EPO where the PCT-EPO Guidelines and the ISPE Guidelines are silent (see points 1.4.001-1.4.006).

Establishing the ISR and the WO-ISA

- 3.2.005** For every international application the EPO as ISA issues either an International Search Report (ISR) or, in exceptional cases, a "Declaration of Non-Establishment of International Search Report" (see point 3.3.003), and a Written Opinion of the International Searching Authority (WO-ISA). *Art. 15, 18 PCT
R. 43, 43bis, 44 PCT
OJ 2003, 574*
- 3.2.006** The procedure for establishing the ISR and the WO-ISA is similar to that for establishing the European search report and the European Search Opinion (ESOP).
- 3.2.007** The WO-ISA provides the applicant with a preliminary non-binding written opinion on the question whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. A WO-ISA established by the EPO as ISA will be comparable to the written opinion established by the EPO for a Euro-direct application (ESOP) (see point 3.2.002). *R. 43bis.1 PCT*
- 3.2.008** Where appropriate, the WO-ISA will also provide an opinion on issues such as added subject-matter, unity of invention, insufficiency of disclosure, support for the claims in the description, clarity, conciseness and formal defects (e.g. missing reference signs).
- 3.2.009** The WO-ISA may be positive or negative. A WO-ISA is qualified as positive if it contains no objections or only minor objections which would not prevent a direct grant in the European phase. In any other case the WO-ISA is considered negative (see point 3.2.013).
- 3.2.010** The ISR is established within three months of receipt of the search copy at the EPO as ISA or within nine months of the earliest priority date, whichever time limit expires later. *R. 42 PCT
WIPO PCT Guide
7.023*
- 3.2.011** The WO-ISA is established at the same time as the ISR. Both documents are sent to the applicant and the IB. The applicant also receives a copy of each document cited in the ISR.
- 3.2.012** As from 1 January 2018, an information sheet ("Information on Search Strategy") is annexed to all search reports drawn up by the *OJ 2017, A106
OJ 2019, A17*

EPO under both the PCT and EP procedures. This information sheet contains details about the databases and keywords used by examiners to retrieve the relevant prior art, as well as the classification symbols defining the extent of the search. Information sheets are made available via file inspection on WIPO's PATENTSCOPE and in the European Patent Register upon publication of the search report.

- 3.2.013** If the EPO acted as ISA (but not as IPEA), the applicant must provide a substantive response to any deficiencies set out in the WO-ISA ("negative WO-ISA") upon entry into the European phase ("mandatory response").

R. 161 EPC
GL/EPO E-IX, 3.2

- 3.2.014** For more information on the "mandatory response" see points 5.4.025 ff.

What happens if there are multiple independent claims?

- 3.2.015** As a rule, the WO-ISA provides an opinion on all searched claims. However, if there are multiple independent claims, only one independent claim in each category is dealt with in detail. In respect of further independent claims, short comments are made. Where appropriate, an objection as to clarity and conciseness under Article 6 PCT may be raised. Further, the ISA may exercise its discretion to ask the applicant to clarify the subject-matter to be searched (see point 3.3.010).

Art. 6 PCT

What happens if the priority document is not available to the ISA?

- 3.2.016** If, at the time the search is conducted, the priority document(s) is (are) not available to the ISA, the search will be conducted as if the priority claim(s) is (are) valid.

Incorporation by reference of missing or correct elements or parts

- 3.2.017** If applicants omit to file an entire element (i.e. all of the description or all of the claims) or a part of the description, the claims or the drawings (including the case where all drawings appear to be missing), they may still furnish it at a later date without affecting the international filing date, subject to the requirements of Rules 4.18 and 20.6(a) PCT and provided the missing element or part was completely contained in the priority document.

R. 20.5 PCT

- 3.2.018** Similarly, if applicants appear to have erroneously filed an entire element (i.e. all of the description or all of the claims) or a part of the description, the claims or the drawings (including the case where all drawings have been erroneously filed), they may still furnish the correct element or part at a later date without affecting the international filing date, subject to the requirements of Rules 4.18 and 20.6(a) PCT and provided the correct element or part was completely contained in the priority document.

R. 20.5bis PCT

3.2.019 The notification of incompatibility filed by the EPO as receiving Office regarding Rule 20.5bis(a)(ii) and (d) PCT does not have any impact on the activity of the EPO as ISA, which depends on the decisions taken by the receiving Office with regard to the international application and its filing date. Therefore, in cases where the international application was corrected by the receiving Office under Rule 20.5bis PCT, the EPO as ISA will carry out the search on the basis of the international application including the correct element or part if:

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- the receiving Office notifies it of the correct element or part before the start of the search; or
- the receiving Office notifies it of the correct element or part after the start of the search (including after its completion) and the applicant pays an additional fee equal to the search fee within one month of the date of the invitation to do so issued by the EPO (Rule 40bis.1 PCT and Article 2(1) RFees).

3.2.020 If the receiving Office has granted a request for incorporation by reference under Rules 4.18 and 20.6 PCT (see points 2.4.001 ff), but the EPO as ISA does not consider the element or part in question to be completely contained in the priority application, for instance because the missing text has been inserted into the description of the application in such a way that it does not have exactly the same meaning as in the priority document, it will indicate this negative finding in the WO-ISA.

R. 4.18, 20.6 PCT

3.2.021 The search will also be extended to cover all prior art that will be relevant if, in accordance with the ISA's findings, the international application is re-dated by a designated Office in the national phase. Re-dating of the filing date can be avoided if the applicant withdraws the subsequently filed missing or correct element or part that is not considered to be completely contained in the priority application (see points 2.4.001 ff).

Correct elements or parts notified after the start of the search and additional fee

3.2.022 The receiving Office may notify the ISA of a correct element or part after the ISA has begun to draw up the international search report. In such cases, the EPO as ISA will invite the applicant (Form PCT/ISA/208) to pay an additional fee equal to the search fee within one month of the date of the invitation.

*OJ 2020, A36, A81
R. 40bis.1 PCT,
Art. 2(1) RFees*

3.2.023 If the EPO as ISA is notified of a correct element or part after the search has started but before its completion and the additional fee is paid, it will also complete the already initiated search and issue a non-official international search report and written opinion based on the international application as initially submitted. However, the non-official international search report and written opinion are issued only for the benefit of the applicant and any designated Offices which have filed a notification of incompatibility under Rule 20.8(b-bis) PCT. They therefore do not constitute the

international search report under Rule 43 PCT and written opinion under Rule 43bis PCT.

What is the "retention principle" for priority claims?

- 3.2.024** The EPO as ISA must consider any priority claim to be valid if the international application claiming the priority right is filed within two months after expiry of the priority year ("retention principle"). Therefore, even if no request for restoration of right of priority has been filed, or if such request has been rejected or has not yet been decided upon at the time the international search is carried out, this has no bearing on the procedure before the ISA (see point 2.15.005).

R. 26bis.2(c) PCT

When will the EPO as ISA take earlier search and classification results into account?

- 3.2.025** For international applications filed on or after 1 July 2017, in carrying out the international search the EPO as ISA may take earlier search results into account where the applicant makes a request to that effect under Rule 4.12 PCT as well as in the cases envisaged under Rule 41.2 PCT. This means that the EPO as ISA will also be able to take earlier search and classification results into account where the international application claims the priority of one or more earlier applications in respect of which an earlier search has been carried out by the EPO, or where the RO has transmitted to it a copy of the results of any earlier search or of any earlier classification under Rule 23bis.2(a) or (c) PCT, or where such a copy is available to it in a form and manner acceptable to it.

R. 23bis.2, 41.2 PCT
PCT Newsletter
1/2018, 9 2/2018, 11

What happens if an applicant has made use of the PCT Direct service?

- 3.2.026** If the applicant has made use of the PCT Direct service by filing, together with the international application, informal comments on the EPO's earlier search results for the priority application (see point 2.19.001), the EPO as ISA will take such informal comments into account when establishing the ISR and WO-ISA. On 1 July 2015, this service was extended to international applications filed with all receiving Offices. As a result, applicants who selected the EPO as ISA will be able to use the service and submit PCT Direct letters irrespective of the receiving Office chosen. The PCT Direct service is useful for applicants interested in a positive WO-ISA in cases where the EPO has raised objections in the search opinion for the priority application. The informal comments should be in the form of a "PCT Direct letter" filed together with the international application and should aim at overcoming the objections raised for the priority application, in particular by explaining any amendments made compared to the priority application and by commenting on the objections raised.

OJ 2017, A21

When does international publication of the application and the ISR take place?

- 3.2.027** International publication by the IB takes place promptly after expiry of 18 months from the priority date. If the ISR is available at that time, it will be published together with the application. If not, the ISR is published separately from the international application on receipt by the IB. *Art. 21 PCT*
R. 48 PCT
- 3.2.028** A WO-ISA for an international application filed on or after 1 July 2014 will be made available to the public as of the date of publication of the international application.

Can the applicant respond to the ISR and WO-ISA?

- 3.2.029** There is no possibility for any form of dialogue between the applicant and the ISA on the content of the ISR and/or the WO-ISA. However, the applicant has the right to submit to the IB amendments to the claims pursuant to Article 19 PCT, as well as informal written comments on the WO-ISA. Moreover, the applicant may consider filing a demand for international preliminary examination under Chapter II PCT (see points 4.1.006 ff). *Art. 19 PCT*
R. 46 PCT
PCT Newsletter
10/2004, 7
6/2010, 8

Amendments under Article 19 PCT

- 3.2.030** Amendments under Article 19 PCT are published by the IB. They are particularly useful if there is a reason to better define the scope of the claims for the purpose of securing provisional protection in the PCT contracting states offering it (see point 5.16.002). *WIPO PCT Guide*
9.004-9.011
- 3.2.031** Applicants wishing to file amendments to the claims must submit a complete set of the claims in replacement of all claims originally filed. The basis for the amendments in the application as filed must also be indicated in an accompanying letter. *R. 46.4 and 46.5*
Section 205 AI
WIPO PCT Guide
9.004-9.011
PCT Newsletter
9/2010, 12
- 3.2.032** Amendments under Article 19 PCT are to be filed **exclusively with the IB in the language of the international publication.** *PCT Newsletter*
6/2010, 8
- 3.2.033** Any amendment to the claims under Article 19 PCT is to be made: *R. 46.1 PCT*
- within two months of the date of transmittal of the search report or
 - within 16 months of the (earliest) priority date,
- whichever time limit expires later.

Later-filed amendments are accepted if they are received before the technical preparations for international publication have been completed.

Informal comments

- 3.2.034** Applicants wishing to file informal comments can file them only with the IB. Informal comments must be in the language of the *PCT Newsletter*
4/2015, 8

international publication and may be submitted only during the international phase, i.e. within 30 months from the (earliest) priority date, but preferably before expiry of 28 months from the priority date. The IB will not send such comments to the IPEA.

Demand for international preliminary examination

- 3.2.035** If a demand for international preliminary examination under Chapter II PCT is filed, any response to the WO-ISA must be submitted to the IPEA in the form of amendments and/or arguments under Article 34 PCT as part of the preliminary examination procedure (see points 4.2.003 ff).

WIPO PCT Guide
7.030

What is the International Preliminary Report on Patentability Chapter I?

- 3.2.036** If no demand for international preliminary examination is filed, the IB will convert the WO-ISA into the International Preliminary Report on Patentability (IPRP Chapter I). Further, the IPRP Chapter I will be communicated to all designated Offices after expiry of 30 months from the priority date. A copy is promptly sent to the applicant. Any informal comments received will be annexed to the IPRP Chapter I.

R. 44bis PCT
PCT Newsletter
9/2018, 13
11/2018, 10

- 3.2.037** The IPRP Chapter I, together with any informal comments, will be made available for public inspection at the IB, but not before the international publication of the international application and subject to Article 38 and Rule 94.1(d) to (g) PCT.

R. 94.1(b) PCT
GL/PCT-EPO C-I, 3
PCT Gazette,
12 May 2016, 93

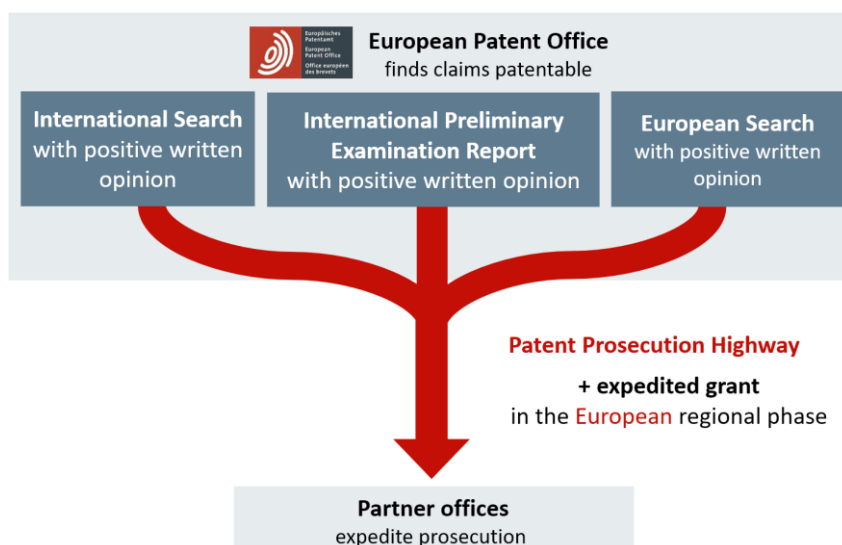
Patent Prosecution Highway (PPH) based on a WO-ISA established by the EPO as ISA

- 3.2.038** The PPH enables applicants whose claims have been determined to be patentable/allowable to have a corresponding application that has been filed with a PPH partner office processed in an accelerated manner while at the same time allowing the offices involved to exploit available work results.

OJ 2016, A44
OJ 2019, A58, A78,
A95, A106, A107
OJ 2020, A11, A21,
A82, A83, A114,
A125, A137, A138

- 3.2.039** Under the PPH pilot programme at the EPO, a PPH request can also be based on the latest PCT work product, i.e. the WO-ISA or the IPER. Where the EPO is the ISA (and/or IPEA) and the international application contains claims that are determined to be patentable/allowable by the EPO as ISA (and/or IPEA), the applicant may, under the PPH pilot programme, request accelerated examination at the EPO's PPH partner offices. The EPO maintains a comprehensive PPH pilot programme with the other IP5 offices, i.e. CNIPA, JPO, KIPO and USPTO, and has launched bilateral PPH pilot programmes with CIPO (Canada), ILPO (Israel), IMPI (Mexico), IPOS (Singapore), IPA (Australia), SIC (Colombia), ROSPATENT (Russian Federation), MyIPO

(Malaysia), IPOPHL (Philippines), EAPO (Eurasian Patent Office) and INDECOP (Peru).



- 3.2.040** Irrespective of the PPH pilot programme, any applicant may request accelerated examination under the PACE programme in the procedure before the EPO as designated or elected Office, at any time. For more information on the PACE programme, please refer to points 5.1.036 ff.

OJ 2010, 352
OJ 2015, A93

3.3 Refusal to perform a (full) international search

When may the EPO refuse to conduct a (full) search?

- 3.3.001** There are several reasons why the EPO as ISA may refuse or will not be able to perform a (full) international search. Such refusal may relate to the subject-matter of the application (see point 3.3.005), non-compliance with requirements regarding the description, claims or drawings of the application (see point 3.3.008), missing sequence listings (see point 3.3.012) or lack of unity of invention (see points 3.3.013 ff).
- 3.3.002** If a claim relates to an invention in respect of which no international search was carried out, the EPO as IPEA will not carry out international preliminary examination in respect of that claim (see point 4.2.027). This also applies if amendments and/or arguments under Article 34 PCT have been filed.

R. 66.1(e) PCT

No search

- 3.3.003** If all claims are found unsearchable, the EPO as ISA will establish a "Declaration of Non-Establishment of International Search Report" instead of an International Search Report and give reasons for the decision in that declaration and in the WO-ISA.

Art. 17(2)(a) PCT
PCT Newsletter
10/2007, 7

Incomplete search

- 3.3.004** If only certain claims are found unsearchable, an ISR and a WO-ISA will be established in respect of the other claims. In that case the international search will be incomplete. *Art. 17(2)(b) PCT*

Limitations related to the subject-matter

- 3.3.005** The EPO is not required to perform an international search if the application relates to subject-matter which is not regarded as an invention or susceptible of industrial application or which is excluded from patentability **under the provisions of the EPC**. Here, the criteria applied for the decision not to perform an international search are the same as for the European procedure. This means that the discretion of an ISA not to search subject-matter set forth in Rule 39.1 PCT is used by the EPO as ISA only to the extent that such subject-matter is not searched under the provisions of the EPC. *Art. 17(2)(a)(i) PCT*
R. 39.1 PCT
Agreement EPO-WIPO, Art. 4, Annex C
OJ 2017, A115
OJ 2018, A24
OJ 2020, A35, A68
GL/PCT-EPO B-VIII, 1-3
WIPO PCT Guide 7.013

Business methods

- 3.3.006** The EPO as ISA will not carry out an international search on an application to the extent that its subject-matter relates to no more than a method of doing business, in the absence of any apparent technical character (see point 3.1.010). *R. 39.1(iii) PCT*
OJ 2007, 592
- 3.3.007** Nevertheless, if the claimed subject-matter involves technical means, an ISR will be established. However, to the extent that the technical means involved were widely available to everyone at the filing date, no documentary evidence is considered required because of their notoriety, and no document will be cited in the ISR. Instead, a statement will be inserted that these technical means are considered so commonplace that no citation is considered necessary.

Complex applications

- 3.3.008** Furthermore, the EPO as ISA will in exceptional cases not perform an international search or will perform a search limited to parts of the claimed subject-matter if the application documents fail to comply with the prescribed requirements to such an extent that a meaningful search is impossible for all or part of the claims. Applications of this kind are often referred to as "complex applications". *Art. 17(2)(a)(ii) PCT*
Art. 150(2) EPC
- 3.3.009** Complex applications will be dealt with in accordance with the PCT-EPO Guidelines and the ISPE Guidelines supplemented, where appropriate, by the EPO's practice as set out in the Guidelines for Examination (GL/EPO) (see points 1.4.001-1.4.006).
- 3.3.010** Before taking a decision under Article 17(2)(a)(ii) PCT, the ISA may invite the applicant informally to provide clarification of the *OJ 2011, 327*

claimed subject-matter in accordance with paragraphs 9.34 and 9.35 of the ISPE Guidelines.

Nucleotide and amino acid sequences

- 3.3.011** If the sequence listing of an international application is not available in electronic form and/or does not comply with the standard provided in Annex C to the Administrative Instructions (WIPO Standard ST.25),⁴⁹ the EPO as ISA will invite the applicant to furnish the sequence listing in electronic format and to pay a late furnishing fee within a non-extendable time limit of one month. Extensive information is provided in the notice from the EPO of 18 October 2013. For international applications filed on or after 1 July 2022, the applicable standard before the EPO is WIPO ST.26. Details of the practice which will be applied for applications filed on or after 1 July 2022 are provided in the decision of the President of the EPO dated 9 December 2021 on the filing of sequence listings and the explanatory notice from the EPO (see [OJ.2021..A96](#) and [A97](#)).
- R. 5.2, 13ter.1 PCT
OJ 2007, Spec.Ed.3, C.2
OJ 2011, 372
OJ 2013, 542
OJ.2021..A96..A97
WIPO PCT Guide
7.005-7.012
PCT Newsletter
6/2018, 11
10/2021, 2*
- 3.3.012** If, within the time limit set, the applicant has not submitted the sequence listing in the required electronic form and format and paid the late furnishing fee, the EPO as ISA will carry out the international search without the sequence listing to the extent that a meaningful search can be carried out. This means that in many cases no or only an incomplete search is performed. This also has consequences for the international preliminary examination procedure before the EPO as IPEA (see [point 4.2.034](#)).
- Lack of unity of invention**
- 3.3.013** If the EPO as ISA considers that the international application claims more than one invention, it states the reasons for its finding and invites the applicant to pay an additional fee for every further search, payable direct to the EPO. At the same time the EPO informs the applicant of the result of the partial international search, which is restricted to those parts of the application relating to the invention first mentioned in the claims. As from 1 April 2017, the EPO sends a provisional opinion on the patentability of the invention (or unitary group of inventions) first mentioned in the claims, together with the invitation to pay additional search fees and the partial search results.
- Art. 17(3)(a) PCT
R. 13, 40 PCT
R. 158(1) EPC
OJ 1989, 61
OJ.2017..A20
GL/ISPE
10.01-10.70
PCT Newsletter
7/2013, 10
6/2021, 11*
- 3.3.014** The amount of the additional fee is reduced for applicants fulfilling the requirements for reduction of the search fee (see [point 3.1.024](#)).
- 3.3.015** If the applicant does not pay any additional search fee, the EPO establishes the ISR and WO-ISA on the basis of the result already

⁴⁹ wipo.int/export/sites/www/standards/en/pdf/03-25-01.pdf. In July 2022, a transition from WIPO Standard ST.25 to Standard ST.26 will take place.

communicated. The WO-ISA will contain the reasons for any non-unity objection raised.

- 3.3.016** If the applicant pays one or more additional search fee(s) within the time limit set, those parts of the application for which additional search fees have been paid will also be searched. Consequently the ISR and WO-ISA will be established for all inventions for which a search fee has been paid.

Cascading non-unity

- 3.3.017** If in response to an invitation by the EPO as ISA additional search fees are paid and the additional searches reveal a further lack of unity within one of the inventions found initially ("*a posteriori*"), no further invitation to pay additional fees is issued and the international search is limited to the first invention of each further invention for which an additional fee was paid. If a cascading lack of unity of invention is likely to arise, the invitation to pay additional fees will contain a warning in that respect.

Consequences of non-payment of additional fee(s)

- 3.3.018** The lack of an ISR and WO-ISA in respect of those parts of the international application for which no additional search fee was paid does not, of itself, have any influence on the validity of the international application. However, the national law of any designated Office may provide that the non-searched parts are considered withdrawn unless a special fee is paid. For further information see the national chapter for the designated Office concerned in the WIPO PCT Guide.

Art. 17(3)(b) PCT
WIPO PCT Guide
7.021
PCT Newsletter
6/2021, 11

- 3.3.019** If the EPO is ISA, non-payment of an additional search fee has the following important consequences in the further procedures before the EPO:

- the EPO as IPEA will not perform the international preliminary examination in respect of any claims relating to an invention for which no additional search fee was paid and, therefore, for which no ISR was established (see point 4.2.037)
- upon entry into the European phase the EPO as designated Office will consider whether the application, which in the meantime may have been amended by the applicant, meets the requirement of unity of invention. If not, the examining division will invite the applicant to pay, within a period of two months, one or more further search fees in respect of any unsearched inventions claimed upon entry into the European phase in order for these to be covered by a further search (see points 5.15.011 ff).

R. 66.1(e) PCT

R. 164 EPC
OJ 2014, A70
GL/EPO C-III, 2.3

Protest procedure

- 3.3.020** An applicant may pay an additional search fee under "protest". This means that at the time of payment of the additional fee(s) the applicant objects to the finding of lack of unity in a written reasoned statement filed with the EPO as ISA. Such objections may concern the finding of non-unity as such or the number of the required additional fees. The lodging of a protest does not delay the search itself. *R. 40.2(c), (e) PCT
R. 158(3) EPC
OJ 2010, 322
OJ 2015, A59
PCT Newsletter
6/2021, 11*
- 3.3.021** According to the **protest procedure** as set out in Rule 40.2 PCT, the only body examining a protest before the EPO as ISA is a review panel consisting of three members, one of whom chairs the panel and another of whom is the examiner who was responsible for issuing the invitation to pay additional fees. The third member is an examiner with special expertise in unity of invention.
- 3.3.022** Where additional fees are paid under protest and the protest fee is duly paid, the protest will be referred to the review panel for a decision in first and last resort. If the review panel finds that the protest was entirely justified, the additional fees and the protest fee will be refunded. If the review panel finds that the protest was justified only in part, the corresponding additional fees will be refunded, but not the protest fee. The findings of the review panel will be taken into account when establishing the ISR and WO-ISA.

3.4 Supplementary International Search (SIS)

General

- 3.4.001** In its capacity as Authority specified for supplementary search, hereafter referred to as the Supplementary International Searching Authority or SISA, the EPO will carry out a supplementary international search (SIS) at the applicant's request, except for applications where it has already acted as ISA. *R. 45bis PCT
Agreement EPO-
WIPO, Annex B
OJ 2017, A115
OJ 2018, A24
OJ 2020, A35, A68
WIPO PCT Guide
8.001-8.053
PCT Newsletter
4/2011, 9
1/2012, 10
9/2016, 8*
- 3.4.002** The purpose of the SIS is to provide the applicant with a supplementary international search report (SISR) in addition to the search carried out under Article 15 PCT by the competent ISA ("main search") (see point 3.2.005). In particular, in view of the growing linguistic diversity of the prior art and considering the language knowledge available in the EPO, a SISR established by the EPO can be very useful to applicants.
- 3.4.003** Since the SISR is established within 28 months from the priority date, it may improve the basis for deciding on national phase entry and, in particular where a SISR is drawn up by the EPO, on whether or not to enter the European phase. The SIS reduces the risk of an applicant being faced with relevant prior art only after

incurring considerable expenditure for entry into the national/regional phase.

3.4.004 In the procedure before the EPO as SISA, no separate written opinion is established. However, the EPO will provide explanations in an annex to the SISR ("Scope Annex") which are equivalent to the information contained in a written opinion established by the EPO as ISA (WO-ISA) (see point 3.2.007).

3.4.005 If the EPO has acted as SISA and established a SISR, in principle, **no supplementary European search report will be drawn up in the European phase**. Further, the applicant will be invited in a communication under Rule 161 EPC to correct any deficiencies set out in the Scope Annex to the SISR upon entry into the European phase (see point 5.4.025).

*Art. 153(7) EPC
R. 161, 164 EPC
OJ 2009, 594
OJ 2014, A70*

What is the scope of the SIS?

3.4.006 The scope of the search conducted by the EPO as SISA, i.e. the documentation searched, is the same as for any international search carried out by the EPO as ISA (see point 3.2.002).

3.4.007 The SIS is conducted on the international application as originally filed, and neither amendments filed under Article 19 and/or 34 PCT nor informal comments will be taken into account.

R. 45bis.5(b) PCT

3.4.008 If the ISR is available at the time the SIS is carried out, it will be taken into account. Prior-art documents mentioned in the ISR are re-cited in the SISR only if the EPO qualifies their relevance differently.

3.4.009 The EPO conducts a maximum of 700 supplementary searches per year.

3.4.010 The **limitations related to subject-matter** set out in Annex C to the Agreement EPO-WIPO apply both where the EPO acts as ISA and where it acts as SISA (see points 3.3.005 ff). The same applies as to any other reason for non-establishment of a (full) search, i.e. complex applications, missing sequence listings and non-unity (see points 3.3.001 ff). As to particulars of the procedure in case of a missing sequence listing and non-unity, please refer to points 3.4.015 and 3.4.019.

3.4.011 Furthermore, the EPO acting as SISA may decide not to carry out a search on claims that were not searched by the ISA. However, if the EPO would have searched those claims had it been the ISA, it will search them as SISA.

*R. 45bis.5(c), (d),
(e) PCT*

What are the requirements for a SIS request?

3.4.012 A SIS request must be filed **with the IB** within 22 months of the priority date. The request is valid only if the supplementary search fee and the supplementary search handling fee are validly paid **to the IB** in Swiss francs. For fee payments to be made during the

*R. 45bis.2 and .3
PCT
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8 February 2018*

international phase, please consult the latest information available on both the EPO⁵⁰ and the WIPO⁵¹ websites.

- 3.4.013** The **supplementary search fee** is **reduced** by 75% under the same conditions as for the reduction of the international search fee (see point 3.1.024). *OJ 2020, A4, A35
OJ 2021, A58*
- 3.4.014** If the application was not filed in English, French or German, and no **translation** into any of these languages has been filed for the purpose of the proceedings before the ISA or for the purpose of international publication, a translation into one of these languages must be filed with the IB together with the SIS request. *R. 45bis.1(b)(iii) PCT*
- 3.4.015** Where applicable, the applicant must, together with the SIS request, also furnish **to the IB** a copy of the **sequence listing** in an electronic format complying with the standard provided for in Annex C to the Administrative Instructions (see points 3.3.011 ff). The EPO will start the supplementary international search only upon receipt of that copy. If it is **not** received, the EPO will invite the applicant to furnish an electronic copy of the sequence listing complying with that annex and to pay a late furnishing fee. *R. 13ter, 45bis.5
PCT
Agreement
EPO-WIPO, Annex B
OJ 2013, 542
OJ 2017, A115
OJ 2018, A24
OJ 2020, A35, A68*

Who may represent the applicant before the EPO as SISA?

- 3.4.016** Applicants may be represented before the EPO as SISA by the agent appointed on filing the international application and/or having the right to practise before the receiving Office, i.e. usually the agent for the international phase (see points 1.9.002 ff). *Art. 49 PCT
R. 83.1, 90.1(a), (b),
(b-bis), (d) PCT*
- 3.4.017** Applicants may also appoint an agent to represent them **specifically before the EPO in its capacity as SISA**. Moreover, the agent appointed for the international phase – and thus including for the procedure before the SISA – may appoint a sub-agent to represent the applicant specifically before the EPO as SISA. All communications issued by the EPO as SISA are sent to the agent specifically appointed for the procedure before the EPO as SISA. An agent specifically appointed to act before the EPO as SISA must be entitled to practise before the EPO (see point 2.10.002).
- 3.4.018** The requirements in respect of filing a separate power of attorney or a copy of a general power of attorney have been waived by the EPO as SISA (see point 2.10.015).

Lack of unity of invention

- 3.4.019** If the EPO as SISA is of the opinion that the international application claims more than one invention, it will state the reasons for its finding and perform a search only for those parts of the application relating to the main invention, i.e. the invention first mentioned in the claims. If, however, the ISA has already raised a *R. 45bis.1(d),
45bis.6 PCT
OJ 2010, 322
OJ 2015, A59*

⁵⁰ epo.org/applying/fees/international-fees.html

⁵¹ wipo.int/pct/en/fees/

non-unity objection and the applicant has, upon filing the SIS request, specified for which invention identified in the ISR the SISR is to be drawn up, the EPO as SISA:

- will restrict its search to that invention, if it agrees with the finding of the ISA;
- will take the applicant's wish into account as far as possible, if the non-unity objection made by the ISA is not followed, but a different non-unity objection is found;
- will perform a full search if it considers the requirement of unity of invention to be met.

3.4.020 In cases of a non-unity finding by the EPO as SISA, applicants cannot pay additional search fees to obtain further searches as in the procedure before the ISA (see point 3.3.013). However, within one month of the date of mailing of the SISR, they may request a review of the non-unity finding. They must also pay the review fee set by the EPO within the same time limit, direct to the EPO. If the review panel considers the lack of unity objection (partly) justified, a revised SISR taking into account the outcome of the review procedure is established.

3.4.021 Upon entry into the European phase, the EPO as designated/elected Office will consider whether the application for which it acted as SISA, and which meanwhile may have been amended, meets the requirement of unity of invention and whether protection is sought for an invention covered by the SISR. If not, the examining division will invite the applicant to pay, within a period of two months, one or more further search fees in respect of any unsearched inventions claimed upon entry into the European phase in order for these to be covered by a further search (see points 5.15.011 ff).

*R. 164 EPC
OJ 2014, A70
GL/EPO C-III, 2.3*

Chapter 4 – The EPO as an International Preliminary Examining Authority (IPEA) – PCT Chapter II

4.1 General

What is the aim of the international preliminary examination?

4.1.001 In its capacity as IPEA the EPO will carry out an international preliminary examination on condition that the applicant has (validly) filed a "demand" and paid the fees due. The usefulness of this optional procedure depends on the international application concerned and, especially, on the result of the international search (see points 3.2.005 ff). A demand under PCT Chapter II may, in particular, be useful in order to overcome objections raised in the WO-ISA and possibly receive a positive IPER at the end of the PCT Chapter II procedure. However, before taking a decision whether to file a demand with the EPO as IPEA, applicants are strongly recommended to take special note of the information set out in points 4.1.006 ff.

4.1.002 The purpose of the international preliminary examination under Chapter II is not grant or refusal of a patent, but provision of a preliminary and non-binding opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable as defined in Article 33 PCT. The statement whether these criteria are satisfied is set out in the International Preliminary Report on Patentability ("IPRP Chapter II") established by the IPEA.

*Art. 35 PCT
R. 64, 65, 67-70 PCT
WIPO PCT Guide
10.001-10.003
OJ 2011, 532
PCT Newsletter
9/2018, 13*

4.1.003 While there is not a fully uniform approach to the criteria for patentability in the national laws of the PCT contracting states, their application during international preliminary examination is such that IPRP Chapter II provides the applicant with a good basis on which to evaluate the chances of obtaining patents in the procedures before the various designated Offices in the national phase.

4.1.004 The term "IPRP Chapter II" is no more than a different name for the international preliminary examination report (IPER). Both terms refer to the same document, i.e. the report established by the competent IPEA containing the result of the international preliminary examination carried out by it. In the following the term IPER will be used.

R. 70.15(b) PCT

4.1.005 As set out above, the applicant may react to the ISR and WO-ISA established by the ISA by filing amendments under Article 19 PCT and/or "informal comments" with the IB, and/or by filing a demand for international preliminary examination (see points 4.1.020 ff). Should the applicant decide to file a demand for international preliminary examination, the demand form together with

amendments and/or arguments under Article 34 PCT are to be filed directly with the competent IPEA (see points 4.1.023 ff).

When is it useful to file a demand for international preliminary examination?

- 4.1.006** Regardless of whether a demand is filed, applicants will receive a preliminary non-binding written opinion on the patentability of their claimed invention (WO-ISA, IPRP Chapter I) as part of the international search procedure (see points 3.2.005 ff). Therefore, the usefulness of the optional international preliminary examination under Chapter II PCT must be considered carefully for each international application. *OJ 2003, 574
PCT Newsletter
4/2010, 8
5/2010, 8*
- 4.1.007** International preliminary examination will, in general, have no added value unless amendments and/or arguments under Article 34 PCT are filed. In the absence of such amendments and/or arguments there will be no reason for the EPO as IPEA to come to a different conclusion to that which it reached in its capacity as ISA, as set out in the WO-ISA.
- 4.1.008** If the ISA has provided the applicant with a declaration under Article 17(2)(a) PCT that no ISR has been established ("declaration of no search"), filing a demand is not recommended, since the EPO as IPEA will not examine claims for which no ISR has been established (see point 4.2.027).
- 4.1.009** It follows that filing a demand for international preliminary examination is, in general, useful only if the WO-ISA was "negative" and the applicant is of the opinion that amendments and/or arguments filed for the purpose of the PCT Chapter II procedure may lead to a "positive" IPER. In other words, international preliminary examination gives the applicant the opportunity to respond to any negative finding of the ISA during the international phase, as opposed to drafting and filing multiple responses with the national/regional offices where national phase entry is made. In the Chapter II procedure before the EPO the applicant will have the opportunity to interact with the examiner and file further amendments should objections still persist after the reply to the WO-ISA (see point 4.2.017).
- 4.1.010** An advantage of using the EPO as IPEA is that a "top-up" search is performed in order to reveal any further relevant prior-art documents, in particular intermediate prior art, which have been published or have become available to the IPEA after the international search report was established (see points 4.2.009 ff). *R. 66.1ter PCT
OJ 2014, A57*

Patent Prosecution Highway (PPH) based on an IPER established by the EPO as IPEA

- 4.1.011** The PPH enables an applicant whose claims have been determined to be patentable/allowable to have a corresponding application that has been filed with a PPH partner office processed in an accelerated manner while at the same time allowing the offices involved to exploit available work results. *[OJ 2016, A44](#), [OJ 2019, A58, A78, A106, A107](#), [OJ 2020, A11, A21, A82, A83, A114, A125, A137, A138](#)*
- 4.1.012** Under the PPH pilot programme at the EPO, a PPH request filed with one of the other IP5 offices, i.e. CNIPA, JPO, KIPO and USPTO, or with one of the offices with which the EPO has launched bilateral PPH pilot programmes, i.e. CIPO (Canada), ILPO (Israel), IMPI (Mexico), IPOS (Singapore), IPA (Australia), ROSPATENT (Russia), IPOPHL (Philippines), MyIPO (Malaysia), EAPO (Eurasian Patent Office), INDECOPI (Peru) and SIC (Colombia), can also be based on an IPER established by the EPO as IPEA ([see point 3.2.038](#)).
- 4.1.013** Irrespective of the PPH pilot programme, any applicant may request accelerated examination under the PACE programme in the procedure before the EPO as **elected Office** at any time. For more information on the PACE programme reference is made to Chapter 5 ([see points 5.1.036 ff](#)).

When is the EPO competent to act as IPEA?

- 4.1.014** Although the EPO's competence as an IPEA is in principle **universal**, i.e. not restricted to international applications from e.g. EPC contracting states, restrictions of various nature do limit its competence ([see points 4.1.015 ff](#)). In particular it is stressed that the EPO is competent to act as IPEA only if a "European ISA" (including the EPO itself) carried out the international search ([see point 4.1.017](#)). *[Art. 32 PCT](#), [R. 59.1 PCT](#), [WIPO PCT Guide 10.006-10.009](#), [PCT Newsletter 6/2013, 9](#)*

Specification by the receiving Office

- 4.1.015** The EPO acts as an IPEA for any application, **on condition that the receiving Office with which the international application was filed has specified the EPO as IPEA**. The same countries which have not (yet) specified the EPO as ISA have not (yet) specified the EPO as IPEA ([see point 3.1.008](#)). Up-to-date information is available in the annexes to the WIPO PCT Guide ([see point 1.3.002](#)). *[Art. 32 PCT](#), [Agreement EPO-WIPO, Art. 3\(2\), \(3\)](#), [OJ 2017, A115](#), [OJ 2018, A24](#), [OJ 2020, A35, A68](#)*
- 4.1.016** Where the international application was filed with the IB, the EPO is competent as IPEA if the international application could have been filed with a receiving Office which has specified the EPO as IPEA.

The EPO or a European ISA acted as ISA

- 4.1.017** The EPO will, however, only act as an IPEA if the international search was also carried out by the EPO or by the Austrian, Finnish, Spanish, Swedish or Turkish patent office or the Nordic Patent Institute or the Visegrad Patent Institute. Applicants considering their choice of ISA (PCT request form Box No. VII) are advised to bear this in mind (see also point 3.1.012).
- Agreement EPO-WIPO, Art. 3(2), Annex A(i)*
OJ 2017, A115
OJ 2018, A24
OJ 2020, A35, A68

Is it possible to choose between different IPEAs?

- 4.1.018** Where several IPEAs are competent in relation to a particular application, the applicant may choose. Here, it should be considered that where the EPO as IPEA has drawn up the IPER the examination fee due in the European phase is reduced by 75% if the subject-matter to be examined is covered by the IPER (see point 5.10.009).
- R. 35.2, 59.1 PCT*
Art. 14(2) RFees
PCT Newsletter
5/2018, 1

Lifting of the competence limitation

- 4.1.019** As a result of an amendment to the Agreement between the EPO and WIPO under the PCT, any national or resident of the USA filing an international application on or after 1 January 2015 with the USPTO or the IB as receiving Office can select the EPO as IPEA, irrespective of the technical field in which the application is classified. It should, however, be noted that the notice from the EPO dated 1 October 2007 concerning business methods remains applicable.
- OJ 2007, 592*
OJ 2017, A115
OJ 2018, A24
OJ 2020, A35, A68

Who may file a demand for international preliminary examination with the EPO?

- 4.1.020** **Sole** applicants must have their residence in, or be a national of, a PCT contracting state bound by PCT Chapter II. If there are **two or more applicants**, at least one of them must meet this requirement. Secondly, the international application must have been filed with a receiving Office of or acting for a PCT contracting state bound by PCT Chapter II.
- Art. 31(2)(a) PCT*
R. 18.1, 54.1, 54.2
PCT
Art. 152 EPC
WIPO PCT Guide
10.004, 10.017
- 4.1.021** On 1 January 2022, all PCT contracting states were bound by Chapter II and, therefore, these requirements do not stand in the way of any applicant wishing to file a demand for a pending international application.

How and where is the demand for international preliminary examination to be filed?

- 4.1.022** The demand for international preliminary examination must be made using the prescribed form (PCT/IPEA/401), downloaded
- Art. 31(3) PCT*
R. 53 PCT
WIPO PCT Guide
10.012

from the WIPO website,⁵² copies of which are also available free of charge from all receiving Offices, the IB and the EPO.

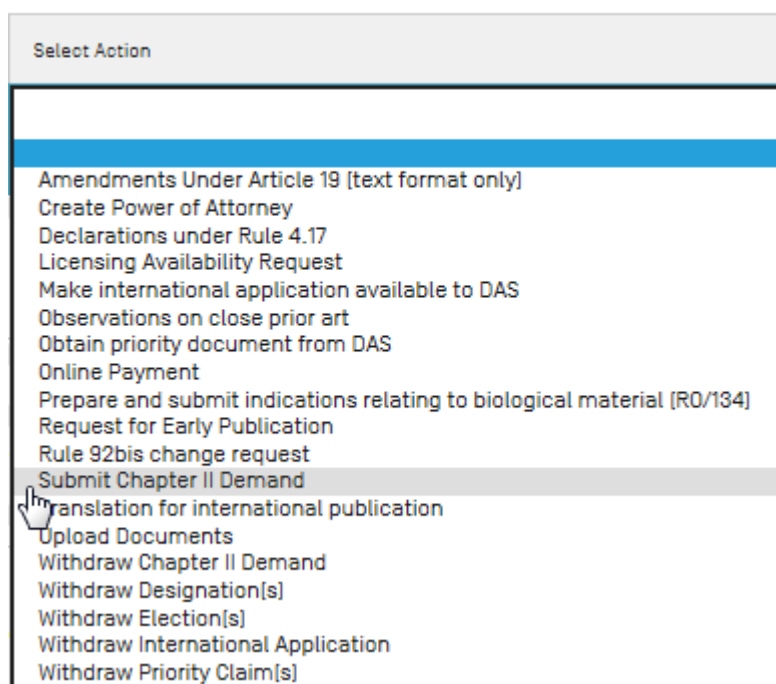
- 4.1.023** The demand and any further document relating to the Chapter II procedure (e.g. amendments and/or arguments filed under Article 34 PCT) **must be submitted to the EPO as IPEA and not to the receiving Office or the IB.** The EPO as IPEA will indicate the date of receipt on the demand and promptly notify the applicant of that date.

Art. 31(6) PCT
R. 59.3, 61 PCT
WIPO PCT Guide
 10.006

- 4.1.024** The demand may be filed with the EPO as IPEA online (see points 2.2.001-2.2.004), by delivery by hand, by post or by fax. The ePCT service can also be used to file the demand online.

OJ 2016, A78

ACTIONS



Select Action

- Amendments Under Article 19 (text format only)
- Create Power of Attorney
- Declarations under Rule 4.17
- Licensing Availability Request
- Make international application available to DAS
- Observations on close prior art
- Obtain priority document from DAS
- Online Payment
- Prepare and submit indications relating to biological material (RO/134)
- Request for Early Publication
- Rule 92bis change request
- Submit Chapter II Demand**
- Translation for international publication
- Upload Documents
- Withdraw Chapter II Demand
- Withdraw Designation(s)
- Withdraw Election(s)
- Withdraw International Application
- Withdraw Priority Claim(s)

- 4.1.025** If the demand is filed by fax, no written confirmation needs to be filed unless the applicant is invited by the EPO as IPEA to do so (see point 2.2.025).

R. 92.4(e), (g) PCT
OJ 2019, A18

- 4.1.026** The EPO filing offices are in the Central European Time (CET) zone.

⁵² wipo.int/export/sites/www/pct/en/forms/demand/ed_demand.pdf

What is the time limit for filing the demand for international preliminary examination with the EPO?

4.1.027 Pursuant to Rule 54bis PCT, the demand may be validly submitted at any time prior to the expiry of the following time limits, whichever expires later: *WIPO PCT Guide 10.010*

- three months from the date of transmittal to the applicant of the ISR and WO-ISA by the ISA or
- 22 months from the (earliest) priority date.

This time limit guarantees that applicants have at least three months from the date of mailing of the ISR to decide on the basis of the results of the international search laid down in the ISR and the WO-ISA whether they want to file a demand with amendments and/or arguments.

4.1.028 If the demand is submitted after expiry of this time limit, the demand is considered as if it had **not been submitted**. *R. 54bis.1(b) PCT*

4.1.029 The applicant should be aware that the possibilities to withdraw a demand and obtain a refund of the fee paid are limited (see point 4.1.064). *R. 90bis.4 PCT*

When does the international preliminary examination start?

4.1.030 As of 1 July 2019, the EPO as IPEA, by default, starts the international preliminary examination when it is in possession of all of the following: *R. 66.1, 66.4bis, 69.1(a) PCT*
WIPO PCT Guide 10.051
PCT Newsletter 06/2019, 12

- the demand,
- the fees payable for international preliminary examination and
- either the ISR or the declaration under Article 17(2)(a) PCT, and the written opinion established under Rule 43bis.1 PCT

unless the applicant expressly requests to postpone the start of the international preliminary examination until the expiration of the applicable time limit in Rule 54bis PCT (see point 4.1.027).

4.1.031 In practice, this should result in more time being available for the EPO as IPEA to carry out the international preliminary examination compared to the situation prior to 1 July 2019 where the IPEA had to wait until the expiration of the applicable time limit under Rule 54bis PCT. In particular, it will give more time to the EPO as IPEA to exchange with the applicant regarding the amendments thereby improving the quality of the written opinion of the IPEA and the IPRP Chapter II. Furthermore, the earlier the written opinion and IPRP Chapter II are made available, the easier it is for the applicant to accelerate the processing of the international application via the PPH pilot programme (see point 4.1.012).

4.1.032 Applicants who want the international preliminary examination to be carried out on the basis of amendments to the claims, description or drawings filed pursuant to Article 34 PCT but need

more time to file those amendments must indicate this by checking the appropriate box or boxes in Box No. IV, item 1, of the PCT demand form (PCT/IPEA/401). The EPO as IPEA will then issue a communication inviting them to submit the amendments within a fixed time limit.

- 4.1.033** Where the WO-ISA is considered a first written opinion (see point 4.2.016), a single extension of one month for filing a reply (amendments and/or arguments under Article 34 PCT) is in principle granted if requested before expiry of the normal time limit under Rule 54bis PCT and on condition that the time limit so extended does not expire later than 25 months from the (earliest) priority date (see also point 4.2.025). **The extension does not apply to the time limit for filing the demand, which cannot be extended.** *Art. 34(2)(c) PCT*

Delaying of national phase until expiry of 30 months

- 4.1.034** Most contracting states apply Article 22 PCT as amended with effect from 1 April 2002. For these states, the 30/31-month time limit for entry into the national/regional phase applies regardless of whether the applicant has submitted the demand for international preliminary examination within 19 months from the (earliest) priority date.
- 4.1.035** The EPO too applies Article 22 PCT as amended with effect from 1 April 2002. Therefore, the time limit for entry into the European phase is always 31 months from the priority date (see points 5.1.010 ff). *R. 159(1) EPC*
- 4.1.036** However, in respect of a small number of designated Offices, old Article 22(1) PCT still applies. The list of the contracting states for which it is still applicable is published on the WIPO website (see point 1.3.005). According to the latest information from WIPO (status on 15 October 2021), the 20/21-month time limit applies to the following states: Luxembourg (LU) and United Republic of Tanzania (TZ). However, in respect of the **regional** designation of each of these states, the time limit under amended Article 22 PCT applies.⁵³ *PCT Newsletter 2/2005, 6*
- 4.1.037** Therefore, if an applicant wants to enter the **national** phase for these states, the demand must be received by the competent IPEA within 19 months from the (earliest) priority date to secure the right to entry into the national phase being delayed until expiry of 30/31 months from the priority date.
- 4.1.038** Moreover, for these states, the applicant must respect the 19-month time limit even where the ISR and the WO-ISA are not yet available. In other words, a delay in the international search does not have as a consequence that the 19-month time limit is changed, since this time limit is exclusively calculated on the basis of the (earliest) priority date.

⁵³ wipo.int/pct/en/texts/time_limits.html

4.1.039 For states applying the old Article 22(1) PCT, a demand filed with the EPO after expiry of 19 months from the priority date but prior to

- three months from the date of transmittal to the applicant of the ISR and the written opinion (WO-ISA) by the ISA or
- 22 months from the (earliest) priority date

is valid, but does not have the effect of postponing commencement of the national phase to 30/31 months for the states in question (see point 4.1.036).

By when will the EPO establish the IPER?

4.1.040 Where the documents required for the preliminary examination were received in due time, the EPO as IPEA will establish the IPER usually within 28 months from the earliest priority date.

R. 69.2 PCT

Is a translation of the international application required?

4.1.041 If neither the language in which the international application was filed nor the language in which the application was published is one of the **official languages of the EPO** (English, French and German), the applicant must within the time limit for filing the demand also file a translation in one of these languages with the EPO as IPEA.

R. 55.2 PCT
OJ 1993, 540
WIPO PCT Guide
10.011

4.1.042 This situation occurs, for instance, if the international application was filed in Spanish, and the Spanish Patent Office acted as ISA. However, if the international application was filed in Spanish but the EPO acted as ISA, the applicant need not furnish a translation to the EPO as IPEA because the international preliminary examination will be carried out on the basis of the translation already furnished for the purposes of international search (see point 3.1.015).

4.1.043 Any amendments filed during the international preliminary examination must be submitted in the language of proceedings before the EPO as IPEA. If they are initially not submitted in that language, the applicant must file a translation.

R. 55.3 PCT
WIPO PCT Guide
10.055

Applications filed in Dutch

4.1.044 If the EPO is IPEA for an international application originally filed in Dutch with the Netherlands Patent Office as receiving Office, the applicant need not file a translation of the international application since the EPO as IPEA will use the published version of the international application as received from the IB, which will be in English, French or German. It should be noted that the demand and amendments under Article 34 PCT must be submitted to the EPO as IPEA in the language of the international publication (see points 3.1.019 and 4.1.043).

R. 12.4, 55.1,
55.2(a) PCT
Agreement EPO-
WIPO, Annex A(i)
OJ 2017, A115
OJ 2018, A24

In which language should the demand be filed?

4.1.045 The demand must be filed in the language in which the international application was filed, except in the following situations: *R. 48.3, 55.1 PCT*

- If the international application was filed in a language other than the language in which it was published, the demand must be filed in the language of publication (e.g. application filed in Dutch, see point 4.1.044).
- If a translation of the application has to be filed with the EPO as IPEA (see points 4.1.041-4.1.043), the demand must be filed in the language of that translation (e.g. application filed in Spanish, see point 4.1.042).

Language of further correspondence

4.1.046 Any other correspondence with the EPO as IPEA may be in any of the EPO's three official languages with the exception of amendments to the application, which are to be filed in the same language as the demand (see point 4.1.043). *R. 92.2(b) PCT*
R. 3 EPC
OJ 1993, 540

Who may represent the applicant before the EPO as IPEA?

4.1.047 Applicants may be represented before the EPO as IPEA by the agent appointed on filing the international application and/or having the right to practise before the receiving Office, i.e. usually the agent for the international phase (see point 1.9.002). They may also appoint an agent to represent them **specifically** before the EPO as IPEA. Moreover, the agent appointed for the international phase may appoint a sub-agent to represent the applicant specifically before the EPO as IPEA. *Art. 49 PCT*
R. 90.1(c), (d) PCT
WIPO PCT Guide
10.019-10.023

4.1.048 Any agent specifically appointed before the EPO as IPEA must be **entitled to practise before the EPO**. It is strongly recommended that applicants who do not have their residence or place of business in one of the EPC contracting states appoint an agent entitled to practise before the EPO for the proceedings before the EPO as IPEA (see points 2.10.002 ff). *R. 90.1(c) PCT*
Art. 134 EPC

4.1.049 The appointment of an agent specifically before the EPO as IPEA can be done by the applicant or the agent for the international phase either by completing Box No. III of the PCT demand form (PCT/IPEA/401) and signing the demand, or by signing and submitting a separate power of attorney. Appointment may also be effected by reference in the demand or in a separate notice to a correctly deposited general power of attorney, of which a copy must be submitted. In that case, the demand or the separate notice may be signed by the purported agent. *R. 90.4, 90.5 PCT*

4.1.050 The EPO as IPEA has waived the requirement that a signed separate power of attorney or a copy of a general power of attorney be submitted to it if the demand is signed by the purported *R. 90.4(d), 90.5(c) PCT*
OJ 2010, 335

agent for the procedure before the EPO as IPEA and not by the applicant or the agent for the international phase.

- 4.1.051** An exception to the waiver applies where the demand is signed by an agent who is not the agent of record, both agents do not belong to the same office and the new agent is not appointed in addition to the agent appointed earlier but appointed under revocation of any earlier appointment (PCT/IPEA/401, Box III, second check box). In that situation a separate power of attorney signed by the applicant or the agent of record, or a copy of a general power of attorney, is to be furnished. A further exception applies in any other case where the EPO is in doubt as to the person entitled to act for the application concerned. For this reason, it is recommended that (common) agents and common representatives obtain explicit authorisation from (all) the applicant(s) by way of direct signature of the PCT demand or by duly signed powers of attorney.

Which states may be elected?

- 4.1.052** The filing of the demand constitutes the election of all PCT contracting states designated in the international application and bound by PCT Chapter II for a national and where possible a regional patent at the same time (see point 4.1.021). If after filing the PCT request the applicant has validly withdrawn a designation, the filing of the demand cannot constitute the election of that state.

Art. 31(4) PCT
R. 53.7 PCT
WIPO PCT Guide
10.005, 10.029

Who has to sign the demand?

- 4.1.053** The demand must be signed by the applicant or, if there is more than one applicant, by all applicants. If the signature of one or more applicants is missing, the EPO as IPEA will not invite the applicant(s) to furnish the missing signature(s) provided that at least one of the applicants has signed the demand (see point 4.1.066).
- 4.1.054** It is also possible for (common) agents or common representatives to sign a demand on behalf of the applicant(s) who appointed them (see points 2.10.010 ff).
- 4.1.055** Where the demand is signed by a (common) agent the EPO as IPEA will not invite the applicant(s) to file a (separate) power of attorney or a copy of a general power of attorney since the EPO has waived these requirements (see points 2.10.015 ff).

R. 53.2(b), 53.8,
60.1(a-ter), 90.3 PCT
WIPO PCT Guide
10.031-10.032

R. 90.4, 90.5 PCT
OJ 2010, 335

What fees are due for the international preliminary examination?

- 4.1.056** For international preliminary examination, the handling fee and the preliminary examination fee must be paid **direct** to the EPO as IPEA. The preliminary examination fee is set by the EPO. The handling fee is provided for in the Schedule of Fees under the PCT which is published by the IB. For fee payments to be made during the international phase, please consult the latest information

Art. 31(5) PCT
R. 57.3, 58 PCT
WIPO PCT Guide
10.035 -10.043

available on both the EPO⁵⁴ and the WIPO⁵⁵ websites. Furthermore, guidance for the payment of fees, expenses and prices is provided in every issue of the Official Journal.

4.1.057 Both fees must be paid within **one month** of the date on which the demand was submitted or within 22 months of the priority date, whichever time limit expires later. The amounts of the handling fee and the preliminary examination fee to be paid will be the amounts applicable on the date of payment.

4.1.058 Applicants are urged to use the **Fee Calculation Sheet** annexed to the demand form (PCT/IPEA/401). For the payment methods currently accepted by the EPO, see point 2.26.012.

Fee reductions

4.1.059 The **handling fee** is reduced by 90% under the same conditions as for the **international filing fee** (see point 2.26.020).

4.1.060 The fee for **international preliminary examination** is reduced by 75% under the same conditions as for the reduction of the **international search fee** (see point 3.1.024).

*Agreement EPO-
WIPO, Annex D-II
OJ 2017, A115
OJ 2020, A4, A35
OJ 2021, A58*

Consequences of non- or late payment of fees

4.1.061 Applicants should avoid late or incomplete payment of the handling and international preliminary examination fee (see points 4.1.056 ff), since the EPO cannot commence international preliminary examination before these fees have been paid. Late payment thus reduces the amount of time available for establishment of the IPER.

*WIPO PCT Guide
10.047*

4.1.062 Where the EPO as IPEA finds that the amount paid to it is insufficient to cover the handling fee and the international preliminary examination fee or that no fees were paid by the time they were due, the EPO as IPEA invites the applicant to pay to it the amount required to cover both fees together with the late-payment fee within one month of the date of the invitation. If the applicant complies with the invitation within the specified time limit, payment is deemed to have been made in due time. The late-payment fee is 50% of the amount of the unpaid fees as specified in the invitation. However, it is at least equal to but not more than double the amount of the handling fee.

R. 58bis PCT

4.1.063 **If the applicant does not comply with the invitation, the demand is deemed not to have been submitted** and no IPER will be established. The absence of a validly filed demand has no consequence for the procedure before the EPO as designated Office because the time limit to be respected for entry into the

⁵⁴ epo.org/applying/fees/international-fees.html

⁵⁵ wipo.int/pct/en/fees/

European phase is in any case 31 months from the priority date (see point 5.1.010).

Refund of the fee for international preliminary examination

- 4.1.064** Where the international application or the demand for international preliminary examination is withdrawn **before** examination has started and within 30 months of the priority date, the fee for international preliminary examination is refunded in full. It is also refunded in full if the demand is deemed not to have been submitted or the fee was paid by mistake. Any amount paid in excess of the amount due is likewise refunded.
- R. 58.3, 90bis.4 PCT Agreement EPO-WIPO, Annex D-II OJ.2017. A115 OJ.2019. A82 PCT Newsletter 03/2019, 9*

Is it possible to correct defects in the demand?

- 4.1.065** If the demand does not comply with the requirements, the EPO as IPEA invites the applicant to correct the defects within one month of the date of the invitation. If the applicant complies with the time limit, the demand is deemed to have been received on the actual filing date, provided that the demand as submitted sufficiently identified the international application. If the applicant does not comply with the invitation in due time, the demand is deemed not to have been submitted.
- R. 60.1 PCT WIPO PCT Guide 10.047-10.050*
- 4.1.066** Where there is more than one applicant, a frequent defect concerns failure to provide the required indications and/or the signatures of all the applicants. However, if the required indications are available in respect of one of the applicants entitled to file a demand and the demand is signed by one of them, this is considered sufficient and no invitation will be issued (see point 4.1.053).
- R. 53, 60.1(a-bis), 60.1(a-ter) PCT*

4.2 The international preliminary examination procedure before the EPO as an IPEA

Which documents form the basis of the international preliminary examination? – Amendments – Missing parts and elements

- 4.2.001** The applicant must indicate in Box No. IV of the demand form (PCT/IPEA/401) whether the international preliminary examination is to be based on the international application
- as (originally) filed,
- or whether it should take account of
- amendments to the claims under Article 19 PCT and/or
 - amendments to the claims, the description and/or the drawings under Article 34(2)(b) PCT.
- R. 53.9, 66.1, R. 66.4bis, 66.5, 70.2(a), (c) PCT WIPO PCT Guide 10.025, 10.061*

The EPO acting as IPEA does not accept claims in the form of auxiliary requests, since this is not provided for under the PCT.

Amendments

- 4.2.002** If amendments under Article 19 PCT are to be taken into account, the applicant must enclose a copy of these with the demand.
- 4.2.003** Amendments and/or arguments filed under Article 34 PCT should preferably be filed together with the demand. Furthermore, as the EPO will start the preliminary examination as soon as it is in possession of all the elements listed in Rule 69.1(a) PCT, applicants who want to make amendments but are not ready to file them at the same time as the demand should always indicate this by checking the appropriate box or boxes in Box No. IV, item 1, of the PCT demand form (PCT/IPEA/401). Otherwise, the EPO is allowed to start the international examination on the basis of the application as filed. Subsequently filed amendments and/or arguments will only be taken into account by the EPO as IPEA if they are received before the point at which preparation of a written opinion or the IPER has actually started. Moreover, if a second written opinion is established (see point 4.2.017), subsequently filed amendments and/or arguments will be taken into account together with the reply to the second written opinion. Amendments and/or arguments not taken into account by the EPO as IPEA may be (re)filed with the elected Offices upon entry into the national phase.
- 4.2.004** If the EPO acted as ISA, the EPO as IPEA will consider the WO-ISA as a first written opinion for the purposes of international preliminary examination and, as a rule, commence the international preliminary examination as soon as it is in possession of all the elements listed in Rule 69.1(a) PCT unless the applicant expressly requests to postpone the start of the international preliminary examination until expiry of the time limit for filing the demand (see points 4.2.021 ff). Therefore, it is important that amendments and/or arguments under Article 34 PCT are filed in due time.
- 4.2.005** Applicants must make sure that none of the amendments go beyond the disclosure in the international application as originally filed. Note that if an amendment contains a negative limitation, e.g. a "disclaimer", the EPO as IPEA in accordance with the discretion provided for in the ISPE Guidelines applies the same approach as in respect of a Euro-direct application (see the annex to this Guide). Further, applicants must indicate in an accompanying letter
- the differences between the application as originally filed and any amendments made,
 - the basis for the amendments in the application as filed and
 - the reasons for any such amendments.
- R. 66.1(b), 66.4bis PCT
OJ 2011, 532
WIPO PCT Guide
10.024, 10.028
PCT Newsletter
06/2019, 12*
- R. 66.1bis(b) PCT
PCT Newsletter
06/2019, 12*
- R. 66.8(a) PCT
GL/ISPE 20.21*

4.2.006 If the basis for any amendment is not indicated as required, the EPO will establish the written opinion and/or IPER as if no amendments had been filed and without first issuing a reminder. *R. 70.2(c-bis) PCT*

4.2.007 If amendments to the claims are filed a complete set of the claims in replacement of all claims originally filed must be submitted. *R. 66.8(c) PCT*

Incorporation by reference of missing or erroneously filed elements and parts

4.2.008 If the receiving Office has granted a request for incorporation by reference of a missing element or part or of a corrected element or part under Rules 4.18, 20.5(a) PCT, 20.6 and/or 20.5bis(d) PCT but the EPO as IPEA does not consider that element or part to be completely contained in the priority application, it will indicate this in the IPER (see points 2.4.001 ff). *R. 4.18, 20.5(a), 20.5bis(d), 20.6 PCT, OJ 2020, A81*

Top-up search

4.2.009 The EPO as IPEA performs a top-up search in Chapter II in order to reveal any further relevant prior-art documents, in particular intermediate prior art, which have been published or have become available to the IPEA after the international search report was established. *R. 66.1ter PCT, OJ 2014, A57*

4.2.010 Any relevant documents found during the top-up search will be indicated in the IPER.

4.2.011 A top-up search does not normally extend beyond the subject-matter searched by the ISA as set out in Rule 66.1ter PCT. It is performed in respect of all applications undergoing Chapter II examination, apart from in exceptional cases where the examiner considers that performing a top-up search would serve no useful purpose.

4.2.012 The top-up search is normally performed at the start of Chapter II examination. However, in the case of non-unity where there is more than one invention claimed in the documents for which examination under Chapter II is demanded, the examiner first issues an invitation to pay further examination fees and then performs the top-up search for all inventions for which further examination fees have been paid, provided that any such inventions are not excluded from preliminary examination by the examiner under Rule 66.1(e) PCT.

4.2.013 The top-up search is based on the application documents available at the start of Chapter II examination. However, in the special case that the application is amended but the basis for the amendments could not be found and/or there is no letter explaining their basis in the description, the top-up search may be limited to the scope of the claims forming the basis of the IPER. *R. 70.2(c), (c-bis) PCT*

4.2.014 If relevant documents are found during the top-up search which give rise to objections as to patentability, the EPO as IPEA issues a second WO along the lines set out under point 4.2.017.

Is it possible to submit third-party observations?

- 4.2.015** Third parties may file observations on a PCT application during the international phase until 28 months from the priority date. Such observations are to be submitted using the online tool provided by WIPO and may be filed anonymously. If third-party observations are received, WIPO will inform the applicant and the applicant is permitted to reply. If the IPER has not yet been established at the time when observations or any reply are received, WIPO will forward the observations and the reply to the EPO acting as IPEA, which will take the observations into account when establishing the second written opinion, if it has not yet been established, and the IPER. Detailed information is contained in a guide entitled "ePCT Third Party Observations", published by WIPO.⁵⁶ *AI, Part 8*

Procedure before the EPO as IPEA when it also acted as ISA

First written opinion

- 4.2.016** A written opinion for the purposes of international preliminary examination is a notification issued by the IPEA which indicates any comments or objections concerning the international application. Pursuant to Rule 66.1bis(a) PCT, the WO-ISA is considered to be a (first) written opinion of the IPEA for the purposes of international preliminary examination. The EPO has notified the International Bureau under Rule 66.1bis(b) PCT that this provision is only applied by the EPO as IPEA to the extent that the WO-ISA has been established by the EPO acting as ISA. *Art. 33, 34, 35 PCT
R. 66.2, 66.3, 66.4
PCT
WIPO PCT Guide
10.064-10.066*

Second written opinion

- 4.2.017** Before issuing a "negative" IPER, the EPO as IPEA will, as a rule, issue a second written opinion, thereby providing the applicant with a further opportunity to submit amendments and/or arguments to overcome any objections raised therein. A request for a second written opinion need not be filed. A second written opinion will be issued on condition that the applicant filed in due time a substantive reply either to the WO-ISA established by the EPO or to the first written opinion established by the EPO as IPEA. The procedure may be different and a second written opinion will not necessarily be issued if a request for consultation by telephone is filed by the applicant (see points 4.2.031 ff). In this context, the term "negative" IPER is to be understood as an IPER informing the applicant of a deficiency requiring a response under Rule 161(1) EPC if the application is to enter the European phase (see points 5.4.025 ff). If the IPER contains no objections or only minor objections which do not hinder a direct grant in the European phase, the IPER is considered positive. *OJ 2011, 532*

⁵⁶ wipo.int/pct/en/epct/pdf/epct_observations.pdf

Procedure before the EPO as IPEA when it did not act as ISA

4.2.018 If the EPO acts as IPEA but did not establish the WO-ISA because the international search was conducted by one of the other European ISAs (see point 3.1.012), the WO-ISA established by any such ISA is not considered a (first) written opinion of the EPO as IPEA (see point 4.2.016). In these cases, the EPO in its function as IPEA will issue a first written opinion if it has any objections. The applicant may respond to this written opinion by filing amendments and/or arguments within the time limit set therein. *OJ 2011, 532
R. 66.1(b) PCT*

4.2.019 In this case a second written opinion will be issued on condition that the applicant has filed amendments and/or arguments to overcome any objections raised in the first written opinion and that there remain objections outstanding such that the IPER would be negative if it were to be issued on the basis of the file as it stands.

International preliminary examination before the EPO: four scenarios

4.2.020 For ease of understanding, the procedure before the EPO as IPEA can be summarised in four scenarios:

First scenario: the EPO acted as ISA and made no objections

4.2.021 If the WO-ISA established by the EPO as ISA contains **no objections** to the international application ("positive WO-ISA"), the EPO as IPEA will consider the WO-ISA as the first written opinion for the purposes of international preliminary examination (see point 4.2.016). The EPO as IPEA will in this case use its discretion in proceeding to issue the IPER as soon as it is in possession of the elements listed in Rule 69.1(a) PCT. Therefore, with the exception of the top-up search, the IPER will have no added value over the information provided in the WO-ISA unless the applicant files amendments and/or arguments for the EPO to take into account as IPEA. *Art. 34(2)(c) PCT*

Second scenario: the EPO acted as ISA and made objections

4.2.022 If the WO-ISA established by the EPO as ISA contained **objections** to the international application ("negative WO-ISA"), the EPO as IPEA will consider the WO-ISA as the first written opinion for the purposes of international preliminary examination (see point 4.2.016). The WO-ISA will not, however, be reissued as a first written opinion of the EPO as IPEA. A second written opinion will be issued on condition that the applicant has filed amendments and/or arguments in reply to the WO-ISA which must be taken into account for international preliminary examination and that there remain objections outstanding such that the IPER would be negative if it were to be issued on the basis of the file as it stands. *R. 66.1bis, 66.4,
66.4bis PCT*

Third scenario: the EPO did not act as ISA and the EPO as IPEA has no objections

- 4.2.023** If the WO-ISA was issued by an ISA other than the EPO, the WO-ISA is not considered to be the first written opinion of the EPO as IPEA (see point 4.2.016). However, if the EPO as IPEA has no objections to the (amended) application for which preliminary examination has been requested, it may proceed to issue the IPER immediately if it is in possession of the elements listed in Rule 69.1(a) PCT (see point 4.1.027). *Art. 34(2)(c) PCT*

Fourth scenario: the EPO did not act as ISA and the EPO as IPEA has objections

- 4.2.024** If the WO-ISA was issued by another ISA, the WO-ISA is not considered to be the first written opinion of the EPO as IPEA (see point 4.2.018). If the EPO as IPEA has objections to the application for which preliminary examination has been requested, it will issue a first written opinion. The applicant may respond to this written opinion by filing amendments and/or arguments within the time limit set therein. A second written opinion will be issued on condition that the applicant has filed amendments and/or arguments to overcome any objections raised in the first written opinion and that there remain objections outstanding such that the IPER would be negative if it were to be issued on the basis of the file as it stands. *R. 66.1bis, 66.2, 66.4, 66.4bis PCT*

What is the time limit for replying to the written opinion?

- 4.2.025** The time limit for the reply to the first written opinion issued by the EPO as IPEA is usually two months but may be extended to a maximum of three months at the applicant's request. Such a request must be filed before expiry of the two-month time limit set. An extension will only be granted if the extended time limit does not expire later than 25 months from the priority date. An extension of the time limit may also be requested if the WO-ISA is considered to be the first written opinion of the EPO as IPEA (see point 4.2.016). The time limit for the reply to the second written opinion or, as the case may be, to the invitation accompanying the minutes of a telephone consultation is normally two months and no shorter than one month unless the applicant has agreed to a shorter time limit. *R. 66.2(d)(e), 69.2 PCT
OJ 2011, 532*

Will the EPO take any SISR into account?

- 4.2.026** The EPO as IPEA will take into account any SISR (only) if it is available at the time the international preliminary examination is performed. A further written opinion will be issued before the IPER is established in the exceptional case that the contents of the SISR would change the EPO's opinion as set out in the WO-ISA established by the EPO as ISA. *R. 45bis.8(c) PCT*

Can the EPO refuse to perform preliminary examination?

- 4.2.027** The EPO as IPEA will not perform an international preliminary examination on any claim for which no international search was performed (see point 3.3.002). In this context it is not relevant whether the applicant files amendments and/or arguments that, allegedly, overcome the reasons for the decision of the ISA not to search the claims concerned. *Art. 17(2)(a) PCT
R. 66.1(e),
66.2(a)(vi) PCT*
- 4.2.028** Further, the EPO as IPEA will make use of its discretion not to carry out preliminary examination if the application relates to subject-matter listed in Rule 67 PCT to the extent that such subject-matter is not regarded as an invention or susceptible of industrial application or is excluded from patentability under the provisions of the EPC. *Art. 34(4) PCT
Agreement EPO-
WIPO, Art. 4
OJ 2017, A115*
- 4.2.029** Also, if the application fails to comply with the prescribed requirements to such an extent that no meaningful opinion can be formed on novelty, inventive step or industrial applicability, no preliminary opinion on these questions will be established.

Is it possible to request consultation by telephone?

- 4.2.030** Since the issues to be discussed must be clear, a request for oral communication will not be granted before the applicant has submitted amendments and/or arguments which are to be taken into account by the EPO as IPEA. A request for oral communication may be granted by the EPO acting as IPEA only once and only in the form of consultation by telephone. *Art. 34(2)(a) PCT
R. 66.6 PCT
OJ 2011, 532
WIPO PCT Guide
10.067*
- 4.2.031** If the applicant files a request for consultation by telephone before a second written opinion is issued, the EPO as IPEA will comply with it. The applicant will be sent the minutes of the telephone consultation together with an invitation to submit further amendments and/or arguments within the time limit set for reply therein. In such a case, no second written opinion will be issued.
- 4.2.032** If the applicant requests a consultation by telephone and/or a second written opinion before a second written opinion is issued, the discretion to decide whether to consult the applicant by telephone or to establish a second written opinion is left to the EPO as IPEA.
- 4.2.033** If the applicant files a request for consultation by telephone after a second written opinion has been issued but before the date on which the IPER is established, the minutes of the telephone consultation are sent to the applicant but will not be accompanied by an invitation to submit further amendments and/or arguments, and none will be accepted unless agreed upon during the consultation by telephone.

Nucleotide and amino acid sequences

- 4.2.034** If the ISR was not drawn up in full or in part because the sequence listing was not available to the ISA in electronic form in the specified format (see point 3.3.012), this may affect the procedure under Chapter II PCT.
R. 13ter.2, 66.1(e) PCT
OJ 2011, 372
OJ 2013, 542
OJ 2021, A96, A97
PCT Newsletter
6/2018, 11
10/2021, 2
- 4.2.035** If no sequence listing in electronic form complying with the requirements is available to the EPO as IPEA, the applicant may be invited to furnish that sequence listing in the required form and format and to pay the late furnishing fee. For international applications filed on or after 1 July 2022, the applicable standard before the EPO is WIPO ST.26. Details of the practice which will be applied for applications filed on or after 1 July 2022 are provided in the decision of the President of the EPO dated 9 December 2021 on the filing of sequence listings and the explanatory notice from the EPO (see OJ 2021, A96 and A97).
- 4.2.036** If no (full) international search was carried out, the EPO as IPEA will not perform the international preliminary examination if a meaningful examination cannot be performed (see point 4.2.027). In such cases an invitation to file a sequence listing under Rule 13ter.2 PCT is not issued by the EPO as IPEA and applicants are advised not to file sequence listings at this late stage.

Unity of invention

- 4.2.037** Where the EPO as IPEA considers that the international application lacks unity of invention, it will invite the applicant either to restrict the claims in order to meet this requirement or, to the extent that the inventions have been searched, to pay additional preliminary examination fees.
Art. 34(3) PCT
R. 68.2, 68.3 PCT
R. 158(2) EPC
GL/ISPE 10.04A
- 4.2.038** If the applicant fulfils the requirements for reduction of the preliminary examination fee, any additional fee is validly paid upon payment of the reduced sum (see point 4.1.060).
- 4.2.039** If the applicant does not pay any additional preliminary examination fee the EPO establishes the IPER on the basis of the result already communicated.
- 4.2.040** If the applicant pays one or more additional preliminary examination fee(s) within the time limit set, those parts of the application for which additional fees have been paid will also be examined. Consequently the IPER will be established for all inventions for which a fee for preliminary examination has been paid.
- 4.2.041** The applicant may pay any additional fee under protest in accordance with Rule 68.3(c) PCT. The protest procedure is the same as before the EPO as ISA (see points 3.3.020 ff).
R. 158(3) EPC
OJ 2010, 322
OJ 2015, A59

4.2.042 Where applicable, the EPO as IPEA will base the examination on the results of the protest procedure, if available, before establishment of the IPER.

4.2.043 Claims relating to inventions in respect of which no international search report has been established will not be the subject of international preliminary examination by the EPO as IPEA (see point 4.2.027).

R. 66.1(e) PCT

What must be done after receipt of the IPER?

4.2.044 The IPER is transmitted to the applicant and the IB. The applicant then has no further opportunity to submit comments to the EPO as IPEA and must now decide, on the basis of the results of the international preliminary examination set out in the IPER, whether to pursue the international application further by entering the national/regional phase before the elected Offices.

*Art. 36, 39 PCT
R. 71.1 PCT*

4.2.045 If the EPO acted as IPEA, the applicant will, where appropriate, be invited to correct any deficiencies set out in the IPER ("negative IPER") upon entry into the European phase (see points 5.4.025 ff).

*R. 161 EPC
GL/EPO E-IX. 3.2*

4.2.046 All (further) questions relating to the **European phase** – the procedure before the **EPO as a designated or elected Office** – are dealt with in detail in Chapter 5.

Confidentiality of the international preliminary examination

4.2.047 The IB and the EPO as IPEA may not allow access to the file of the international preliminary examination to third parties without authorisation by the applicant.

*Art. 36(3), 38 PCT
R. 71.1 PCT, R.
73.2, 94.1(c),
94.3 PCT
Art. 128 EPC
OJ 1999, 329
OJ 2003, 382
OJ 2007, Spec.Ed.3,
J.3
WIPO PCT Guide
10.003, 10.080
OJ 2019, A16
PCT Newsletter
9/2020, 11-13
9/2021, 1*

4.2.048 Once the IPER has been established and transmitted to the IB, the latter sends a copy of the IPER and its annexes to each elected Office. As from that time, the IB also furnishes copies of the IPER, its annexes and other documents from the file of the international preliminary examination on request to any person on behalf of the EPO as elected Office.

4.2.049 Furthermore, after completion of the IPER the EPO as **elected Office** allows access to the file of the international preliminary examination in accordance with the provisions of the EPC.

Chapter 5 – Euro-PCT procedure before the EPO as a designated (PCT Chapter I) or elected (PCT Chapter II) Office

5.1 General

5.1.001 Before the end of the international phase, applicants must decide whether and where they want to proceed with their international application in the national/regional phase before the designated/elected Offices.

5.1.002 Applicants wishing to obtain a European patent must enter what is known as "the European phase", which means that they must fulfil the requirements (see points 5.2.001 ff) for initiating the processing of their application by the EPO as designated or elected Office in due time (see point 5.1.010).

When is the EPO a designated or elected Office?

5.1.003 If an applicant enters the European phase without having requested international preliminary examination under Chapter II, the EPO will act as a "designated Office" (see points 5.1.004 ff). However, if before entering the European phase the application was processed under Chapter II, the EPO will act in the European phase as an "elected Office" (see points 5.1.007 ff).

*Art. 2(xiii) and (xiv)
PCT
Art. 153(1) EPC
GL/EPO E-IX.2*

When can the EPO act as designated Office?

5.1.004 Since all EPC contracting states are PCT contracting states, the EPO can act as a designated Office for any EPC contracting state, provided the international application was filed on or after the date on which the EPC entered into force for the state concerned (see point 1.8.001).

5.1.005 If this requirement is not met, it may be that an extension or validation agreement between the EPO and a PCT contracting state was in force on the international filing date that provides for the extension or validation of a European patent application or a European patent to or in the state for which patent protection is sought (see points 2.12.001 ff).

5.1.006 Furthermore, a European patent for any EPC contracting state can be obtained only if neither the application nor the (automatic) designation of the state concerned for a European patent has been (deemed) withdrawn during the international phase.

*R. 90bis.1 and 2
PCT*

When can the EPO act as elected Office?

5.1.007 For the EPO as an elected Office, the same requirements apply as for the EPO acting as a designated Office (see points 5.1.004-5.1.006). In addition, however, at least one of the EPC contracting

states must have been elected for a European patent in the demand for international preliminary examination. Since the filing of the demand constitutes the election of all PCT contracting states that were designated for, where possible, a national and a regional patent, this requirement will automatically be met in respect of each state that was an EPC contracting state at the international filing date unless the applicant has withdrawn such election in the meantime (see points 1.8.001, 4.1.052).

When must the applicant decide on the territorial scope of protection sought for the European patent?

5.1.008 Upon entry into the European phase the applicant must pay the designation fee (see point 5.8.001). Payment of this fee confirms the designation of all EPC contracting states that were designated on the international filing date for a European patent (see points 1.8.001, 2.11.001 ff).

*R. 159(1)(d) EPC
Art. 2(1)3 RFees*

5.1.009 Within the time limit for payment of the designation fee, the applicant must take a decision on the extension or validation states for which extension or validation of the European patent is sought and pay the applicable fees (see points 2.12.001 ff, 5.8.009 ff). A fee has to be paid for each extension or validation state; there is no flat fee.

When must the European phase be initiated before the EPO as designated or elected Office?

5.1.010 If, after considering the ISR and WO-ISA (see points 3.2.029 ff) and, where applicable, the result of the international preliminary examination as laid down in the IPER (see points 4.2.044 ff) and/or a supplementary international search (see points 3.4.001 ff), applicants decide to pursue their international application further before the EPO as designated/elected Office, they must comply with the requirements for entry into the European phase **within 31 months** from the filing date or, if priority has been claimed, from the earliest priority date.

*Art. 22(1), (3),
39(1)(a), (b) PCT
R. 159(1) EPC*

5.1.011 The time limit for complying with the requirements for entry into the European phase thus extends by one month beyond the standard time limit of 30 months provided for in Articles 22(1) and 39(1)(a) PCT and applies irrespective of whether or not a demand for international preliminary examination was filed (see points 4.1.034-4.1.035).

If the 31-month time limit expires on a day on which one of the filing offices of the EPO is not open for receipt of documents or on which no mail is delivered, the period is extended to the first day thereafter on which all filing offices are open for receipt of documents or on which mail is delivered.

*R. 80.5 PCT
R. 134 EPC*

5.1.012 If the applicant does not comply with the requirements for entry into the European phase within the 31-month time limit, the Euro-PCT application will, as a rule, be deemed to be withdrawn (see point 5.2.003). For the legal remedies available in cases of non-

*Art. 24(1)(iii), 39(2)
R. 160 EPC
OJ 2020, A120,
A123*

observance of time limits due to the disruptions caused by the COVID-19 outbreak, it is advisable to refer to the information regularly published in the Official Journal and on the EPO website.⁵⁷ For the procedures and safeguards applicable in the event of the unavailability of the EPO's means of electronic filing or fee payment tools, please see OJ 2020, A120.

What is the language of the proceedings in the European phase?

- 5.1.013** The language of the proceedings is one of the official languages of the EPO (English, French and German). If the international application was published by WIPO (see point 3.2.027) in an official language of the EPO, that language is the language of the proceedings in the European phase. If not, the EPO official language of the translation to be submitted upon entry into the European phase is the language of the proceedings (see points 5.5.001 ff). *Art. 14(1), 14(3), 153(4) EPC
R. 159(1)(a) EPC*
- 5.1.014** The EPO does not allow the language of the proceedings to be changed. Reference is made to decision G 4/08 of the Enlarged Board of Appeal. *OJ 2010, 572*

How and where should the applicant initiate the procedure before the EPO as a designated/elected Office (Form 1200)?

- 5.1.015** For entry into the European phase, it is strongly recommended that applicants use the latest version of Form 1200.
- 5.1.016** Form 1200 may be filed electronically using EPO Online Filing, Online Filing 2.0 or the EPO web-form filing service. The (basic part of the) filing fee is reduced if Form 1200 is filed online (see point 5.7.003).⁵⁸ *OJ 2021, A42, A43
Art. 2(1)1 RFees*
- 5.1.017** The form may also be filed on paper and can be downloaded from the EPO website.⁵⁹ Applicants are advised to read the explanatory notes carefully before completing the form.
- 5.1.018** The form must be filed with the EPO direct. It should not be sent either to the IB or to an authority of an EPC contracting state competent to receive European patent applications.
- 5.1.019** If filed in paper form, either by post or by fax, only one copy of the document must be submitted. If the form is filed by fax, a confirmation copy must be filed only on invitation by the EPO. *OJ 2019, A18*

⁵⁷ epo.org/news-events/covid-19.html

⁵⁸ epo.org/applying/online-services.html

⁵⁹ epo.org/applying/forms.html

5.1.020 The IB sends to the EPO as designated/elected Office a copy of the international application and the ISR, any claims amended under Article 19 PCT, as applicable, as well as the International Preliminary Report on Patentability. The EPO is also informed when no meaningful search could be carried out or could only be carried out for some of the claims. Where a demand for international preliminary examination (Chapter II) was filed, the IB transmits to the EPO as elected Office the IPER, including any annexes. The IB will notify the applicant thereof, and the applicant should not file any of these documents with the EPO (see point 5.2.007). However, the applicant may have to file a translation of the international application and further documents as set out below (see points 5.5.001 ff).

Art. 17(2)(a), (b) PCT
Art. 19 PCT
Art. 20 PCT
Art. 36(3) PCT
R. 44bis.2(a) PCT
R. 47.1, 73 PCT
PCT Newsletter
11/2013, 9

5.1.021 Applicants must indicate the European application number, which as a rule is communicated to them approximately ten months after international publication (EPO Form 1201). Applicants who have not yet been notified of this number when performing the required steps for entry into the European phase may instead cite the PCT application number or the PCT publication number.

Can the applicant request early processing?

5.1.022 Applicants can request the EPO as designated or elected Office to commence processing the Euro-PCT application at any time before expiry of the 31-month time limit.

Art. 23(2), 40(2) PCT
R. 159 EPC
OJ 2013, 156
OJ 2015, A94
GL/EPO E-IX, 2.8

5.1.023 For this purpose, applicants must file an **express request for early processing** under Article 23(2) or 40(2) PCT. Section 12.1 of Form 1200 includes a check box for this purpose. However, the request is effective only if they also fulfil the requirements for entry into the European phase **as if the 31-month time limit provided for in Rule 159(1) EPC expired on the date they request early processing**.

5.1.024 This means that, for an application to be processed early, the following requirements must be complied with: payment of the filing fee (see point 5.7.001), including any additional (page) fees (see points 5.7.004 ff), filing of the translation (where applicable; see point 5.5.001), specification of the application documents on which the proceedings before the EPO as designated or elected Office are to be based (see point 5.4.001) and payment of the search fee (where applicable; see point 5.9.016). Which further requirements must be complied with depends on the date on which early processing is requested, i.e. on whether the time limits for paying the designation fee (Rule 39(1) EPC) and the renewal fee (Rule 51(1) EPC) and for filing the request for examination and paying the examination fee (Rule 70(1) EPC) have already expired at that date (see points 5.8.001, 5.11.001 ff and 5.10.001 ff). The term "necessary requirements" is used to refer to the requirements that must be complied with for a request for early processing of the application concerned to be effective.

- 5.1.025** Where applicable, the certificate of exhibition must also be filed on entry into the European phase (see point 5.12.004). However, if this requirement is not met, this will not prevent the request for early processing from being effective, but it will affect the prior art that the EPO takes into account in the procedure. *Art. 55(2) EPC
R. 159(1)(h) EPC
GL/EPO B-VI. 5.5*
- 5.1.026** Claims fees for any claims in excess of fifteen need only be paid before expiry of the period under Rule 162(2) EPC. Therefore, their payment is not a requirement for a request for early processing to be effective.
- 5.1.027** Fees which need to be paid for a request for early processing to be effective may also be paid by **automatic debit order**. However, applicants should bear in mind that automatic debiting can only be performed if the EPO can establish whether or not a page fee needs to be included as part of the filing fee. This is only possible if the EPO has access to the documents referred to in Article 20 PCT, i.e. if:
- the international application has already been published at the time the request for early processing is received or
 - the EPO is the receiving Office or
 - the EPO is acting as (S)ISA or IPEA.
- If none of the above documents is available to the EPO on the day the request for early processing is filed, applicants should choose another means of payment. Otherwise the fees due will be debited on the date of receipt of the documents referred to in Article 20 PCT from the International Bureau under Rule 47.4 PCT. In this case, the date on which the request for early processing takes effect will be postponed to that date (see point 5.1.028).
- 5.1.028** If on the date the request for early processing is filed all necessary requirements (see point 5.1.024) are complied with, the request for early processing is effective as from that date and the application will be processed in the same way as any "regular" Euro-PCT application which has entered the European phase. This means, for instance, that the EPO as designated/elected Office will issue the communication under Rule 161/162 EPC directly after it has established that the request for early processing is effective (see point 5.4.012) and on condition that the international search report has already been established. Furthermore, as from the date the request for early processing is effective, the applicant may file a divisional application (see point 5.18.001).
- 5.1.029** If on the date the request for early processing is filed any necessary requirement (see point 5.2.005) is not complied with, the request for early processing will not be effective on the date of receipt of the request but only as from the earliest date thereafter on which all requirements necessary on that date have been complied with (see point 5.1.024). It is only on the latter date that the application enters the European phase. From that moment on it is processed as if the 31-month time limit had already expired, i.e. in the same way as any "regular" Euro-PCT application which has entered the European phase.

5.1.030 If the requirements for a request for early processing to be effective are not complied with before expiry of the 31-month time limit, the EPO as designated/elected Office cannot start processing the application until that time limit has expired.

5.1.031 From the date the applicant's request for early processing is effective, any subsequent withdrawal under Rule 90bis PCT will have no effect in respect of the procedure in the European phase. R. 90bis.6(a) PCT

5.1.032 Where applicants request early processing with a view to starting not only the application's processing before the EPO as designated/elected Office but also its examination, they must have filed a valid request for examination (including payment of the examination fee) under Article 94 EPC, even if the time limit under Rule 70(1) EPC has not yet expired at the date of effective entry into the European phase, since examination will be taken up only if a request for examination has been validly filed.

5.1.033 Furthermore, where applicants have filed a request for examination before the EPO has sent them the supplementary European search report (where applicable), the EPO will not start examination until it has received from them an indication that they wish to proceed further with their application and, if required, their response to the extended European search report. Applicants may waive the right to be asked whether they wish to proceed further by selecting the second check box in Section 12.2 of Form 1200. R. 70(2), 70a(2) EPC
OJ 2015, A94

Euro-PCT(1200E2K) - Draft - Euro-PCT

EP Phase | **Names** | **States** | **Biological Material** | **Documents** | **Fee Payment** | **Ar**

Entry into the European Phase

☒ EPO as designated office
☐ EPO as elected office

Examination of the application under Article 94 EPC is hereby requested. The examination fee is being (has been)

☐ Request for examination in an admissible non-EPO language

☐ The/Each applicant hereby declares that he is an entity or a natural person under Rule 6(4) EPC.

Acceleration of procedure

☐ Early processing of the application pursuant to Article 23(2) / 40(2) PCT is hereby requested ("early entry in")

☒ The applicant waives his right to be asked under Rule 70(2) EPC whether he wishes to proceed further with

☐ The applicant waives his right to the communication under Rules 161(1) or (2) and 162 EPC.

Past Record

The language of the international publication is: English

Procedural Language: English

PCT Application Number: PCT/US2018/123456

PCT Publication Number: WO _____

EP Application Number: EP _____

International Filing Date: 1 March 2018

International Searching Authority (ISA): US United States Patent and Trade

International Preliminary Examining Authority: ☐ IPEA other than EPO ☒ IPEA is EPO

5.1.034 If the EPO acts as **designated** Office and the IB has not yet transmitted to it a copy of the international application, the ISR and Art. 20 PCT
R. 44bis.2(b),
47.4 PCT

the WO-ISA, applicants may but do **not** have to file with the IB a request to do so. If needed, the EPO will take care of this itself.

- 5.1.035** The same applies if the EPO acts as **elected** Office and the IB has not yet transmitted to it a copy of the international application, the ISR, the WO-ISA and the IPER with its annexes. *Art. 36(3)(a) PCT
R. 61.2(d), 73.2(b)
PCT*

Accelerated prosecution of applications – the "PACE" programme

- 5.1.036** An effective request for early processing causes prosecution of the application by the EPO as designated/elected Office to be taken up before expiry of the 31-month time limit. However, a request for early processing does not lead to accelerated prosecution. Applicants who also want to request such accelerated prosecution of their application in the European phase must therefore submit a separate online request under the PACE programme upon entry into the European phase or later (EPO Form 1005). Depending on the time when the request is submitted and the indications made in the form, accelerated prosecution covers the establishment of the supplementary European search report, where such a report is to be drawn up (see points 5.9.001 ff) or substantive examination. A PACE request can be filed only once for each stage of the procedure. For Euro-PCT applications for which a supplementary European search is carried out, this means that a request for accelerated examination cannot be filed on entry into the European phase but only after receipt of the supplementary European search report, i.e. after applicants have declared that they wish to proceed further to examination (Rules 70(2) and 70a(2) EPC; see points 5.9.012-5.9.013). *R. 10 EPC
OJ 2015, A93
GL/EPO E-VIII, 4*

Combined PACE request and waiver of Rule 161/162 communication

- 5.1.037** Even if a PACE request has been filed, the EPO will have to respect the six-month time limit provided for in Rules 161 and 162 EPC and will therefore not start supplementary European search or examination before expiry of that time limit (see point 5.4.011). Applicants interested in accelerating the proceedings may therefore consider waiving their right to the Rule 161/162 communication, which they can do by selecting the first check box in Section 12.2 of EPO Form 1200. The further details are set out below (see point 5.4.017). To ensure the waiver is effective, they must not pay any claims fees by automatic debit order as they will then not be debited (and thus considered paid) until the last day of the six-month period under Rule 162(2) EPC. Instead, they must already pay them on entry into the European phase or on effecting early entry into the European phase. *OJ 2015, A94*

5.2 What are the requirements for entry into the European phase?

Which steps have to be taken for entry into the European phase?

5.2.001 The process generally referred to as "entry into the European phase" is not an act in itself but may be described as a series of "steps" to be taken or, in other words, as a bundle of requirements to be fulfilled within 31 months of the international filing date or, where applicable, the earliest priority date claimed for the international application ("31-month time limit"). Which requirements are to be fulfilled within the 31-month time limit depends to a certain extent on the particular case.

5.2.002 Some requirements must be fulfilled in every case, such as payment of the filing fee (point 5.7.001) and specification of the documents on which processing in the European phase is to be based (points 5.4.001 ff). Further, as a rule, the designation fee is due and the request for examination must be filed on expiry of the 31-month time limit for entry into the European phase unless the ISR was published extremely late (see points 5.8.001, 5.10.004). However, the filing of a translation, for instance, is required only if the international application was not published in an official language of the EPO (points 5.5.001 ff). This means that for each application the applicant must verify which requirements are to be fulfilled within the 31-month time limit.

5.2.003 If the applicant does not fulfil all requirements that must be met within the 31-month time limit, in many cases – depending on exactly which requirement was not met – the effect is that the application is deemed to be withdrawn as from the date of expiry of that time limit. Any loss of rights may be remedied, but only if the strict requirements under which a remedy applies are fulfilled in due time. If not, the application is irreversibly lost. Each of the requirements will be discussed in detail below (see points 5.2.005 ff).

*Art. 24(1)(iii),
39(2) PCT
Art. 121,
122 EPC
R. 135, 136,
160, 163(6) EPC*

5.2.004 All requirements in respect of which non-timely compliance results in a loss of rights (directly) upon expiry of the 31-month time limit are listed in Rule 159 EPC. In view of that legal effect they are usually referred to as "minimum requirements" for entry into the European phase.

What are the minimum requirements?

5.2.005 In order to initiate the European phase the applicant must take **at least the following steps within 31 months of** the filing date or, if priority has been claimed, of the earliest priority date:

R. 159 EPC

- supply a translation if the Euro-PCT application was not published in one of the EPO's official languages (see points 5.5.001 ff),

*Art. 153(4) EPC
R. 159(1)(a) EPC*

- specify the application documents on which the European grant procedure is to be based (see points 5.4.001 ff), *R. 159(1)(b) EPC*
- pay the filing fee provided for in Article 78(2) EPC, including an additional (page) fee for applications with more than 35 pages (see points 5.7.001 ff), *R. 159(1)(c) EPC*
- pay the designation fee (and any extension or validation fees) if the period under Rule 39 EPC has expired earlier (see points 5.8.001 ff), *R. 159(1)(d) EPC*
- pay the search fee if a supplementary European search report is to be drawn up (see points 5.9.016 ff), *Art. 153(7) EPC*
R. 159(1)(e) EPC
- file the request for examination and pay the examination fee if the period under Rule 70(1) EPC has expired earlier (see points 5.10.001 ff), *R. 159(1)(f) EPC*
- pay the renewal fee due in respect of the third year under Article 86(1) EPC, if the fee has fallen due earlier under Rule 51(1) EPC (see points 5.11.001 ff), *R. 159(1)(g) EPC*
- where applicable (in rare cases), file the certificate of exhibition mentioned in Article 55(2) EPC (see points 5.12.004 ff). *R. 159(1)(h) EPC*

What further requirements need to be considered?

5.2.006 Besides the "minimum requirements" mentioned in point 5.2.005, the applicant may have to complete one or more of the following steps within the 31-month time limit. These further requirements are not referred to as "minimum requirements" since failure to comply with them does not have the direct effect of a loss of rights (see point 5.2.003).

These further requirements are:

- pay any claims fees due (see points 5.11.004 ff), *R. 162 EPC*
- file the designation of the inventor (see points 5.12.001 ff), *R. 163(1) EPC*
- furnish the file number or the certified copy of the application(s) of which priority is claimed (see points 5.13.004 ff), *R. 163(2) EPC*
- furnish a sequence listing complying with the standard (see point 5.6.006), *R. 163(3) EPC*
- furnish the indications on the applicant mentioned in Rule 163(4) EPC in respect of any applicant (see points 5.12.001 ff), *R. 163(4) EPC*
- appoint a professional representative (see point 5.3.006), *R. 163(5) EPC*
- furnish a copy of the results of any search carried out by or on behalf of the authority with which the priority application was filed (see points 5.4.005 ff). *R. 141(1) EPC*

- 5.2.007** The EPO is sent the copy of the international application required under Article 22(1) or 39(1) PCT by the IB before expiry of the 31-month time limit. The applicant therefore does not have to submit a copy of the application to the EPO. *Art. 20, 22(1), 39(1) PCT*
- 5.2.008** If amendments have been made under Article 19 PCT (see points 3.2.030 ff), the copy transmitted by the IB also includes these amendments and any statement the applicant has made on them. *Art. 19(1), 20(2) PCT*

Amounts of fees to be paid in the European phase and payment methods

- 5.2.009** The amounts of all fees that are due on entry into the European phase or thereafter are listed in the current version of the Rules relating to Fees (RFees) and the Schedule of fees and expenses of the EPO, which is published as a supplement to the Official Journal and can be found on the EPO website in the section "Fees".⁶⁰ Guidance for the payment of fees and expenses is published in each issue of the Official Journal.
- 5.2.010** All fees to be paid on entry into the European phase are to be paid to the EPO in euro. The bank account opened in the name of the EPO and information on the different options to make a valid payment, for instance via a deposit account held with the EPO, can be found on the EPO website in the section "Fees – Fee payments and refunds".⁶¹ *OJ 2021, A61*
- 5.2.011** Applicants having a deposit account may also make use of the automatic debiting procedure in respect of any fee that must be paid within the 31-month time limit and thereafter. If an automatic debit order is filed in due time, any fee which must be paid within the 31-month time limit will be debited on the last day of that time limit. Debit orders must be filed in an electronically processable format (XML), either using one of the accepted electronic means of filing (e.g. EPO Form 1200E in Online Filing 2.0), via Online Fee Payment in Online services or via Central Fee Payment.⁶² This also applies to the filing or the revocation of an automatic debit order. More information on deposit accounts and the automatic debiting procedure can be found in the "Arrangements for deposit accounts (ADA) and their annexes" that are published on a regular basis in a supplementary publication to the Official Journal.
- 5.2.012** Fees due to the EPO may also be paid by credit card. For conditions and further information, reference is made to the decision of the President of the EPO dated 22 August 2017 as published in the Official Journal. *OJ 2017, A72
OJ 2021, A61, A73*
- 5.2.013** It is not possible to pay fees in cash or by cheque.

⁶⁰ epo.org/applying/fees.html

⁶¹ epo.org/applying/fees/payment.html

⁶² epo.org/applying/online-services/fee-payment.html#tab1

5.3 Communication with the applicant – representation – address for correspondence (Form 1200, Sections 1, 2 and 3)

5.3.001 The EPO will issue any communication only to the applicant or, where applicable, the professional representative. Accordingly, any procedural action will be accepted by the EPO only if it is undertaken by the applicant or by the (appointed) professional representative on the applicant's behalf. An exception applies in respect of fees, which can be validly paid to the EPO by a third party.

5.3.002 As a rule, communications from the EPO are issued by postal services via registered letter. However, applicants who have their residence or principal place of business in an EPC contracting state, professional representatives and qualified legal practitioners (see point 5.3.007) may also receive communications electronically if they have registered for the EPO Mailbox service (see point 2.2.032). For using that service, registration via EPO smart card is required. Detailed information is given on the EPO's website.⁶³

*Art. 134(8) EPC
R. 125-127 EPC
OJ 2021, A5*

5.3.003 Applicants who are not obliged to appoint a professional representative for the proceedings in the European phase and have not done so (see point 5.3.006) may indicate an address for correspondence other than their residence, to which the EPO will

⁶³ epo.org/applying/online-services/mailbox.html and docs.epoline.org/tutorials/Mailbox%20Tutorial/TutorialMailbox/tutEN/startEN.html.

send its communications. This applies irrespective of whether the applicant is a natural or a legal person.

5.3.004 However, an address for correspondence must be the applicant's own address and must be located in an EPC contracting state. *OJ 2014, A99*

5.3.005 Please note that an address for correspondence which is acceptable for the procedure in the international phase (see point 2.10.014) does not necessarily comply with the requirements applicable in the European phase.

Requirements specific to applicants with neither residence nor principal place of business in an EPC contracting state – "non-resident applicants"

5.3.006 Applicants having neither their residence nor their principal place of business within the territory of one of the EPC contracting states ("non-resident applicants") must be represented by and act through a professional representative in all proceedings established by the EPC.⁶⁴ In such cases a professional representative must be appointed in due time. *Art. 27(7) PCT*
Art. 133(2), 134 EPC
GL/EPO A-III, 2.1
GL/EPO A-VIII, 1
GL/EPO E-IX, 2.3.1

⁶⁴ epo.org/applying/online-services/representatives.html

- 5.3.007** Two categories of professional representative have the right to practise before the EPO:
- professional representatives entered in the directory of professional representatives maintained by the EPO and
 - legal practitioners who are qualified to practise in patent matters in one of the EPC contracting states and have their place of business in that state.

5.3.008 However, up to expiry of the 31-month time limit under Rule 159 EPC, non-resident applicants may either comply with any requirement **themselves** or act through a professional representative entitled to practise before the EPO. This means that, within the 31-month time limit, non-resident applicants may themselves sign and file EPO Form 1200, submit amendments, file a translation of the application, file a request for early processing, etc.

5.3.009 Non-resident applicants who did **not** themselves take the **required** steps for entry into the European phase **within the 31-month time limit** may subsequently perform these and the other procedural steps (e.g. filing of a request for re-establishment of rights) **only through a professional representative entitled to practise before the EPO**.

5.3.010 Acting through a professional representative is not obligatory for payments to the EPO that can be validly made by anybody throughout the proceedings before the EPO.

GL/EPO A-X, 1

5.3.011 Under no circumstances can an applicant act through an agent appointed for the international phase if the latter is not a professional representative entitled to practise before the EPO (see point 5.3.007). Moreover, any such representative appointed as agent for the international phase is not automatically appointed for the European phase. A separate appointment is necessary (see point 2.10.019).

5.3.012 The only case in which a new appointment need not be made is if the professional representative was validly appointed in the procedure before the EPO as receiving Office, (S)ISA or IPEA and the appointment expressly extends to representation in the European phase (see point 2.10.019).

5.3.013 **Non-resident applicants** are therefore **strongly advised** to appoint a professional representative before the EPO **in good time**, i.e. before they initiate proceedings before the EPO as designated/elected Office, and to indicate this appointment in Form 1200, Sections 2 and 3 (see points 5.3.017 ff).

5.3.014 If no professional representative is appointed for the proceedings in the European phase, any communication issued by the EPO as designated/elected Office will be sent to the applicant.

What happens if the requirement to appoint a professional representative is not observed?

- 5.3.015** Where applicants have failed to appoint a professional representative as required, they will be invited by the EPO to do so within a time limit of two months. Until the EPO is informed of a (valid) appointment, any procedural step taken by such applicants will be deemed not to have been taken. If the deficiency is not corrected in time, the application will be refused. *R. 163(5), (6) EPC*
- 5.3.016** The refusal may be remedied by a request for further processing. The request will be granted if within two months of notification of the refusal a professional representative is appointed and the fee for further processing is paid. *Art. 121 EPC
R. 135 EPC
Art. 2(1)12 RFees*

How does a representative have to be appointed?

- 5.3.017** In proceedings before the EPO as designated/elected Office, representatives identifying themselves as a professional representative entered on the list maintained by the EPO generally do not need to file an authorisation or (a reference to) a general authorisation. For their appointment to be valid, professional representatives merely need to inform the EPO that they have been appointed for the application concerned (see also point 2.10.019), e.g. by signing EPO Form 1200. *Art. 133, 134 EPC
R. 152 EPC
GL/EPO A-VIII, 1.6
OJ 2007, Spec.Ed.3,
L.1*
- 5.3.018** Legal practitioners entitled to practise before the EPO (see point 5.3.007) and employees representing an applicant with residence or principal place of business in an EPC contracting state who are not professional representatives must, as a rule, file a signed authorisation or a reference to a general authorisation. However, no (new) authorisation is to be filed where an authorisation was filed with the EPO as receiving Office, (S)ISA or IPEA and the authorisation expressly empowered the legal practitioner or employee to act before the EPO in the European phase (see point 2.10.019). *Art. 133(3) and
134(8) EPC
OJ 2007, Spec.Ed.3,
L.1
GL/EPO A-VIII,
1.6-1.7*
- 5.3.019** Where an authorisation is to be filed, the use of EPO Form 1003 is recommended for individual authorisations and EPO Form 1004 for general authorisations. If an authorisation is required but not received, the EPO will invite the applicant or representative to file it within a period to be specified in the invitation. *GL/EPO A-VIII, 1.8*

5.4 Application documents on which the procedure before the EPO as designated/elected Office is based (Form 1200, Section 6)

Which version of the Euro-PCT application is taken as the basis for the procedure in the European phase (Form 1200, Sections 6.1 and 6.2)?

- 5.4.001** When an application enters the European phase, the applicant must specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based. *R. 159(1)(b) EPC*
- 5.4.002** The documents on which the proceedings before the EPO as designated or elected Office are to be based are to be indicated in Section 6 of Form 1200 and, where necessary, further clarification may be provided on an additional sheet. The applicant must make sure that the indications in Section 6 and/or on the additional sheet correspond to any indications given in the table for Section 6 provided for calculation of the additional (page) fee to be paid for

applications comprising more than 35 pages (see points 5.7.001 ff).

Euro-PCT(1200E2K) - Draft - Euro-PCT

EP Phase Names States Biological Material Documents Fee

Proceedings | Amendments and Translations | Document Overview | Sequence Listings

Documents intended for proceedings before the EPO (R. 159 (1) (b) EPC) and for calculation

Overview | Description | Claims | Drawings

Total number of pages - description:	30
Total number of pages - claims: +	7
Total number of pages - drawings: +	4
default one page - abstract: +	1
Total number of pages:	42

4 2 8

Euro-PCT(1200E2K) - Draft - Euro-PCT

EP Phase Names States Biological Material Documents Fee Payment

Proceedings | Amendments and Translations | Document Overview | Sequence Listings | Additional Documents

Documents intended for proceedings before the EPO (R. 159 (1) (b) EPC) and for calculating the addition

Overview | Description | Claims | Drawings

Number of claims on entry into the European phase:

Number of claims you intend to pay for (including first 15 claims):

The set of claims on entry into the European phase comprises the following parts:

Part	Pages from...to...	Number of pages
<input type="checkbox"/> International application as published	<input type="text"/>	<input type="text"/>
<input checked="" type="checkbox"/> Art. 19 PCT amendments	31-37	7
<input type="checkbox"/> Art. 34 PCT amendments	<input type="text"/>	<input type="text"/>
<input type="checkbox"/> Amendments on entry into the European phase	<input type="text"/>	<input type="text"/>
Total number of pages - claims:		7

0 4 9

5.4.003 If the EPO acts as **designated** Office, the documents forming the basis for the proceedings in the European phase are to be indicated in Section 6.1.

- 5.4.004** If the EPO acts as **elected** Office, the documents forming the basis for the proceedings in the European phase are to be indicated in Section 6.2. If the applicant has filed test reports (e.g. comparative examples in support of inventive step) with the EPO as IPEA, it is assumed that the EPO may also use them in the European grant proceedings.

Information on prior art (Form 1200, Section 6.3)

- 5.4.005** Applicants claiming priority of one or more previous applications must, on entry into the European phase, file the results of any search carried out by or on behalf of the office(s) of first filing (OFF) for each application whose priority is claimed. *Art. 124 EPC
R. 70b, 141 EPC
OJ 2010, 410*
- 5.4.006** The obligation applies irrespective of the form and format in which the search results are drawn up, for instance a search report, a listing of cited prior art or a (relevant) part of an examination report. A complete copy of each relevant document as received from the authority concerned must be filed. However, neither a translation of the search results nor a copy of the documents cited in them need be filed at this stage.
- 5.4.007** If the search results for the priority application(s) are not available at the time of entry into the European phase, applicants must file them as soon as they receive them.
- 5.4.008** No action is required on the part of the applicant where an exemption applies. Firstly, this is the case if the EPO is the authority that performed the search on a claimed priority application and established a search report of one of the following types: a European search report, an ISR, an international-type search report or a search report on a national application drawn up on behalf of a national office. *GL/EPO A-III, 6.12*
- 5.4.009** A further exemption from the obligation to file a copy of any search results for a priority application applies if priority is claimed of a first filing made in:
- Austria *OJ 2011, 62*
 - Denmark *OJ 2012, 540*
 - Japan *OJ 2013, 216*
 - the People's Republic of China *OJ 2015, A2*
 - the Republic of Korea *OJ 2016, A18*
 - Spain *OJ 2019, A55*
 - Sweden *OJ 2021, A38, A39, A40*
 - Switzerland
 - the United Kingdom
 - the United States of America.

- 5.4.010** Where applicants have to file search results for a claimed priority application with the EPO but these results are not received, they will be invited to file, within a two-month period set in the invitation, either the copy of the missing search results or a statement that these results are (in whole or in part) not available to them. The invitation will be issued at the time the examining division assumes responsibility for the application. *R. 70b EPC*

Amending the application – Rule 161/162 communication

- 5.4.011** For the purpose of the proceedings before the EPO as designated/elected Office, applicants may file (**voluntary**) amendments within the 31-month time limit and, if desired, file (further) amendments until expiry of the time limit set in the combined communication under Rules 161 and 162 EPC ("Rule 161/162 communication"). As set out below, if the EPO acted as (Supplementary) International Searching Authority, applicants may be **required** to file (**mandatory**) amendments to or comments on their application within the time limit set in the Rule 161/162 communication (see point 5.4.026). Whether or not a response is mandatory is clearly stated in the communication, which is therefore worded differently depending on the case (EPO Forms 1226AA and 1226BB). *Art. 28, 41 PCT
R. 161(1),
(2) EPC
GL/EPO E-IX, 3*
- 5.4.012** The Rule 161/162 communication is issued promptly once the application has entered the European phase and on condition that the ISR is available to the EPO. This means that it is also issued if the applicant has already filed, with Form 1200 or thereafter, amendments and/or comments to form the basis for the procedure in the European phase.
- 5.4.013** The time limit set in the communication under Rules 161 and 162 EPC is six months. This time limit cannot be extended.
- 5.4.014** After expiry of the six-month time limit further possibilities for amending the application are limited. If a supplementary European search is carried out, the applicant always has one further opportunity to submit amendments upon receipt of the report (see point 5.4.021). Amendments made thereafter require the consent of the examining division. By way of exception, the applicant may have the opportunity to submit amendments without requiring the consent of the examining division, namely in cases where the supplementary European search is dispensed with (EPO was (S)ISA) and, after expiry of the period according to Rule 161(1) EPC, the examining division considers the application documents on file not to have been searched before. In such a situation, if a further search is carried out according to Rule 164(2)(a) EPC (see points 5.15.011-5.15.012), the applicant may amend the application in response to the communication of the results of that search in accordance with Rule 164(2)(b) EPC. *R. 70a(2), 137(3)*
- 5.4.015** Under no circumstances may amendments go beyond the disclosure in the international application as filed. *Art. 28(2), 41(2) PCT
Art. 123(2) EPC*

- 5.4.016** Whenever filing amendments, applicants must **identify** them and indicate their basis in the application as filed. If they fail to do so, the examining division may issue a communication requesting correction of the omission within a non-extendable time limit of one month. If the deficiency is not remedied in due time, the application will be deemed withdrawn under Article 94(4) EPC. The loss of rights can be remedied with further processing.
- Art. 94(4) EPC
R. 137(4) EPC
GL/EPO E-IX. 3.4, H-III, 2.1.1

May the Rule 161/162 communication be waived?

- 5.4.017** In order to accelerate the European grant proceedings, applicants can, if so desired in addition to a PACE request (see point 5.1.036), waive their right to the Rule 161/162 communication by selecting the first check box in Section 12.2 of Form 1200.
- OJ 2015, A94
- 5.4.018** This waiver will be effective and no Rule 161/162 communication issued only if the applicant has taken all steps required to make its issue superfluous. In other words, the applicant must ensure that all requirements for the application to proceed to the next phase of the European grant procedure without the communication being issued are fulfilled. This means that within the 31-month time limit the applicant must have:
- paid any claims fees due for the set of claims indicated as the basis for the procedure in the European phase and
 - filed a substantive response to, as the case may be, the WO-ISA, the IPER or the SISR established by the EPO, if in the absence of such a response the EPO would issue an invitation to do so under Rule 161(1) EPC ("mandatory response").
- OJ 2015, A94
GL/EPO E-IX. 3.1, 3.2, 3.3.1, 3.3.2
- 5.4.019** If any requirement for the waiver to be effective is not fulfilled, a Rule 161/162 communication will be issued and processing of the application will not start until the six-month time limit set in it has expired. This applies even if a request under the PACE programme is or has been filed (see point 5.1.036).

Amendments and the Rule 161/162 communication if a supplementary European search is carried out

- 5.4.020** If the **EPO did not act as ISA or SISA** for the application it will draw up a supplementary European search report after expiry of the six-month time limit set in the Rule 161 EPC/Rule 162 EPC communication (EPO Form 1226CC) (see point 5.9.001). Up to expiry of this six-month time limit the applicant may file ("voluntary") amendments. All amendments filed within the time limit set in the communication will be taken into account in drawing up the supplementary European search report and the search opinion (see points 5.9.001 and 5.9.003). This means that the supplementary European search will be based on the last set of claims filed up to expiry of this time limit for which any claims fees due have been paid (see point 5.11.005). Applicants who do not want to use the entire six-month time limit under Rules 161(2) and
- R. 161(2) EPC
GL/EPO E-IX. 3.1

162 EPC for filing further amendments can shorten this time limit and request the immediate start of the supplementary search by explicitly waiving their right to use the remainder of the six-month period.

- 5.4.021** Once the extended supplementary European search report has been issued, applicants have an opportunity to comment on both the report and the search opinion and file amendments to the description, claims and drawings within the period specified in the communication under Rules 70(2) and 70a(2) EPC for indicating whether they wish to proceed further with their application and to respond to the extended European search report. The reply is voluntary if the search opinion attached to the supplementary European search report is "positive". *R. 137(2) EPC*
- 5.4.022** If any deficiencies are noted in the search opinion, applicants will be required under Rule 70a(2) EPC to respond to the objections made ("mandatory response"). If they do not submit a substantive reply to such a communication under Rule 70a(2) EPC, their application will be deemed withdrawn. The loss of rights can be remedied with further processing. *R. 70(2), 70a(2), 70a(3)*
- 5.4.023** It is at the examining division's discretion whether to accept any further amendment at a later stage of the proceedings. *R. 137(3) EPC*

Amendments and the Rule 161/162 communication if no supplementary European search is carried out

- 5.4.024** If the **EPO has performed a search** for an international application in its capacity **as ISA or SISA**, it will not carry out a supplementary European search upon entry into the European phase (see point 5.9.001), and any amendments filed within the time limit set in the Rule 161/162 communication will serve as the basis for examination. *R. 137(2), 161(1) EPC
GL/EPO E-IX.3.2*
- 5.4.025** If the EPO as ISA made any negative finding and drew up a "negative WO-ISA" or, where the EPO also acted as IPEA, a "negative IPER" or made "objections" in the explanatory notes on the SISR ("negative SISR"), the applicant is required under Rule 161(1) EPC to respond to this finding on entry into the European phase or, at the latest, in the response to the Rule 161 EPC/Rule 162 EPC communication ("mandatory response"). *R. 161(1) EPC*
- 5.4.026** If a response is mandatory, the applicant must respond to the Rule 161/162 communication within the six-month time limit set therein. A response is not mandatory if a substantive response has already been submitted before the Rule 161/162 communication is issued. For the purpose of Rule 161(1) EPC, new amendments filed on entry into the European phase and up to the time the Rule 161/162 communication is issued are held to constitute a response on condition that the applicant has indicated – preferably in Box 6 of Form 1200 – that they form the basis for prosecution of the application in the European phase. Whether or not a response is mandatory is clearly indicated in the Rule 161/162 communication (see point 5.4.012).

- 5.4.027** Under the same conditions as for amendments made on entry into the European phase or thereafter, but subject to certain requirements set out in detail in the Guidelines, any amendments made under Article 19 and/or 34 PCT and maintained for the processing of the application in the European phase will constitute a response. *GL/EPO E-IX. 3.3.1*
- 5.4.028** If a "mandatory response" is not filed in due time, the application is deemed withdrawn under Rule 161(1) EPC. Further processing may be requested. *Art. 121 EPC
R. 135 EPC*
- 5.4.029** Further, if the EPO acted as ISA, SISA or IPEA in the international phase, and regardless of whether the EPO in the international phase made any negative finding (see point 5.4.025), applicants have the right to submit (further) comments on the WO-ISA, IPER and SISR and to file (further) voluntary amendments as they see fit within the time limit set in the Rule 161/162 communication. *R. 137(2) EPC*
- 5.4.030** All comments and amendments validly filed by applicants on a mandatory or voluntary basis within the six-month time limit set in the Rule 161/162 communication will be taken into account in the examination proceedings. This means that examination will be based on the last set of claims filed up to expiry of this time limit for which any claims fees due have been paid (see points 5.11.004 ff). If applicants do not wish to wait until expiry of the six-month time limit under Rules 161(1) and 162 EPC for examination to start, they may request the immediate start of examination by explicitly waiving the right to use the remainder of the six-month period. *GL/EPO C-II. 3.2
GL/EPO E-IX. 4.1- 4.3
OJ 2015, A94*
- 5.4.031** It is at the examining division's discretion whether to accept any further amendment at a later stage of the examination proceedings. *R. 137(3) EPC*

Does the filing of amendments have an impact on the number of claims fees payable?

- 5.4.032** The claims fees are calculated on the basis of the number of claims contained in the application in the version that is, in accordance with the indications in Form 1200, to be taken as the basis for the procedure in the European phase. The amount of the claims fee varies according to a two-tier system. For the 16th and each further claim a claims fee must be paid. However, for any claim over 50 a higher amount is due (see points 5.11.004 ff). *R. 162 EPC
Art. 2(1)15 RFees
GL/EPO E-IX. 2.3.8*
- 5.4.033** Where claims fees are to be paid, they must be paid within the 31-month time limit. If applicants fail to pay (the correct amount of) claims fees in due time, they will be invited in the Rule 161/162 communication to pay the missing amount within the non-extendable six-month time limit set there (see point 5.4.013). If the number of claims increases due to (further) amendments filed in reply to the Rule 161/162 communication, any claims fees due for the additional claims must also be paid within the six-month time limit (see points 5.4.034 and 5.11.009). If a supplementary European search is carried out, it will relate to the last set of claims received before expiry of the six-month time limit and will be

confined to claims for which any claims fees, where applicable, have been paid in due time.

- 5.4.034** Where the number of claims changes as a consequence of a (further) amendment submitted within the six-month time limit set in the Rule 161/162 communication (see point 5.4.013), that number is decisive for calculating the amount of the claims fees to be paid. *OJ 2016, A102, A103*
- 5.4.035** If consequent to the amendments made in reply to the Rule 161/162 communication the number of claims forming the basis for the further procedure is reduced, any claims fees overpaid will be refunded. *R. 162(3) EPC*
- 5.4.036** Claims for which a fee due is not paid are deemed to be abandoned, and the applicant is notified thereof. The loss of rights may be remedied by further processing. Features of a claim deemed abandoned which are not otherwise to be found in the description cannot be reintroduced into the application. *Art. 121 EPC
R. 135, 162(4) EPC
J. 15/88 (OJ 1990, 445)*

5.5 Translation of the application documents and other documents (Form 1200, Section 7)

When must the applicant file a translation of the Euro-PCT application?

- 5.5.001** If the Euro-PCT application was not published by the IB in an official language of the EPO (English, French, German), the applicant must, within the 31-month time limit, submit to the EPO a translation of the application into any such language (Form 1200, Section 7). *Art. 22(1), 39(1) PCT
R. 49.2 PCT
Art. 14(2), 153(4) EPC
R. 159(1)(a) EPC*
- 5.5.002** If a translation must be filed, the language of the translation determines the language of the proceedings before the EPO (see point 5.1.013). At any time during the processing of the application in the European phase, errors made in the translation may be corrected by bringing the translation into line with the application as filed. *GL/EPO E-IX, 2.1.3
Art. 14(2), (3) EPC
GL/EPO A-VII, 7*
- 5.5.003** If the international application has been published by the IB in an official language of the EPO, no translation is required and any translation that is nevertheless filed will be ignored, since the language of the proceedings may not be changed upon entry into the European phase (see point 5.1.014). *G 4/08
OJ 2010, 572*
- 5.5.004** In written proceedings the applicant may use any official language of the EPO, but any amendments to the application must always be filed in the language of the proceedings (see point 5.1.013). *R. 3 EPC*
- 5.5.005** On the question of whether a translation of the priority document must be submitted, reference is made to points 5.13.011 ff.

What are the consequences of not filing a translation of the application?

- 5.5.006** If the translation of the Euro-PCT application is not filed within the 31-month time limit, the application is deemed to be withdrawn and the applicant is informed of this in a communication. Moreover, the application will not be considered as comprised in the state of the art under Article 54(3) EPC (see point 5.17.001). *Art. 153(5) EPC
R. 112, 160 EPC*
- 5.5.007** The loss of rights is deemed not to have occurred if, within two months of notification of the above communication, the translation is supplied and further processing is requested by payment of the relevant fee. *Art. 121 EPC
R. 135(1) EPC
Art. 2(1)12 RFees*
- 5.5.008** Alternatively, the applicant may request reinstatement of rights under Rule 49.6 PCT if the application is deemed withdrawn because the translation was not filed in due time. However, given that the fee is higher and stricter requirements apply, this remedy has no advantages unless the period for requesting further processing has already expired. *R. 49.6 PCT
Art. 122 EPC
R. 136 EPC
Art. 2(1)13 RFees*
- 5.5.009** If the time limit for requesting further processing has been missed (see point 5.5.007), a request for re-establishment of rights in respect of the period under Rule 135(1) EPC may be filed. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. filing the translation under Rule 159(1)(a) EPC and paying the fee for further processing, has been paid. Attention is drawn to the further requirements under Article 122 and Rule 136 EPC for the request to be admissible and allowable (see also points 5.13.018 and 5.19.001). *Art. 122 EPC
R. 136 EPC
Art. 2(1)13 RFees
GL/EPO E-VIII, 3.1.3*

What must the translation include?

- 5.5.010** The translation must always include: *R. 49.2 and .5 PCT*
- the description (as originally filed)
 - the claims (as originally filed)
 - any text in the drawings (as originally filed)
 - the abstract (as published).
- 5.5.011** If the EPO acts as **designated** Office the translation must, where applicable, also include: *R. 49.5 PCT*
- any **amendments made to the claims** under Article 19 PCT in the form of a translation of the complete set of claims furnished in replacement of all claims originally filed (see point 3.2.033), but **only** if the applicant wishes these **amendments to form the basis of further proceedings**. The claims as amended under Article 19 PCT must be submitted together with, if submitted to the IB, the translated statement under Article 19(1) PCT explaining the amendments and the translated accompanying letter under Rule 46.5(b) PCT, indicating the basis for the amendments *Art. 19 PCT
R. 46.4 and .5, 49.3, 49.5(c), (c-bis) PCT
R. 3, 137(4) EPC
GL/EPO E-IX, 2.1.3*

in the application as filed, in an official language of the EPO, so as to allow the examiner to understand and take the amendments into account. If a translation of the complete set of claims submitted under Article 19 PCT is not furnished or not accompanied by a translation of, if submitted to the IB, the statement under Article 19(1) PCT and, as the case may be, the accompanying letter under Rule 46.5(b) PCT, the amendments under Article 19 PCT will be **disregarded** for the further proceedings. If only the statement under Article 19(1) PCT is not available in an official language, only that document will be disregarded. If the translation of the accompanying letter under Rule 46.5(b) PCT is not filed in time, the EPO will disregard that letter and may proceed under Rule 137(4) EPC where applicable.

- any published request for rectification R. 91.3(d),
48.2(a)(vii) PCT
- any sequence listing unless the text in the sequence listing is available to the EPO in English (see point 5.6.010); if text matter in a sequence listing must be translated, the complete sequence listing complying with WIPO standard ST.25,⁶⁵ including the translated text matter, must be submitted. R. 49.5(a-bis), 5.2(b) PCT
- any separately furnished references to deposited biological material (Form 1200, Section 8). R. 49.5(h), 13bis.3
and 13bis.4 PCT

5.5.012 In addition, if the EPO acts as **elected** Office, translations of **any annexes** to the international preliminary examination report (IPER) **must always be furnished**, i.e. including any accompanying letter under Rule 66.8(a) or (b) PCT indicating the basis for the amendments in the application as filed. Such translations must be filed regardless of whether protection is sought for the same version of the application documents as was the subject of the IPER. Therefore, a translation of any amendments made under Article 19 PCT (and the accompanying letter under Rule 46.5(b) PCT, if annexed to the IPER) must also always be filed if such amendments are annexed to the IPER. Art. 36(2)(b) and (3)(b), 39(2) PCT
R. 70.16, 74.1(a) PCT
R. 137(4) EPC
GL/EPO E-IX, 2.1.3

5.5.013 If the applicant wishes the amendments to the claims made before the IB under Article 19 PCT to form the basis of the subsequent procedure before the EPO as elected Office, and these amendments are not annexed to the IPER (for instance because they were considered reversed by an amendment under Article 34 PCT), then these amendments must also be furnished in translated form, as otherwise they will be disregarded for the further proceedings. Any statement under Article 19(1) PCT and the letter under Rule 46.5(b) PCT must also be furnished in an official language of the EPO. If only the statement under Article 19(1) PCT is not available in an official language, only that document will be disregarded (see point 5.5.011). If the translation

⁶⁵ For international applications filed on or after 1 July 2022, the applicable sequence listing standard is WIPO ST.26. For further details, see OJ 2021, A96 and A97.

of any of the accompanying letters referred to in Rule 70.16(a)(i) PCT is not filed in time, the EPO will disregard these letters and may proceed under Rule 137(4) EPC where applicable.

- 5.5.014** If a translation must be filed, it has to be a translation of the application as published by the IB. This means that, where the international publication contains both erroneously filed application documents and correct application documents incorporated under Rule 20.6 PCT in conjunction with Rule 20.5bis(d) PCT (see point 5.13.024 ff), the translation to be filed on entry into the European phase under Rule 159(1)(a) EPC must likewise contain both the erroneously filed and the correct application documents, regardless of whether the further proceedings before the EPO will be based on the erroneously filed ones or on the correct ones. In order to distinguish the two sets of application documents for the purposes of publication under Article 153(4) EPC and the further proceedings before the EPO, the applicant must clearly indicate which pages of the translation make up the correct application documents and which make up the erroneously filed ones.

R. 20.5bis(d) PCT
R. 20.6 PCT
OJ 2020, A81
GL/EPO E-IX, 2.1.3

What are the consequences of not filing a translation of the annexes to the IPER?

- 5.5.015** If the translation of all annexes to the IPER is not filed in due time, the applicant is invited to furnish the missing translation within two months of notification of a communication. If the applicant fails to reply (in time), the Euro-PCT application is deemed to be withdrawn. The applicant may request further processing (or reinstatement of rights, see points 5.5.007 ff and points 5.13.018 and 5.19.001).

Art. 121 EPC
R. 135, 160 EPC
Art. 2(1)12 RFees
GL/EPO E-IX, 2.1.3

5.6 Biological material and nucleotide and amino acid sequences

Biological material (Form 1200, Section 8)

- 5.6.001** For the sufficient disclosure of an invention which involves the use of or concerns biological material which is not available to the public and which cannot be described in the application in an enabling manner for the skilled person, specific requirements must be met on the international filing date and within sixteen months of the date of filing or the priority date (see point 2.22.001). If any of these requirements was not met within the applicable time limit, no remedy is available before the EPO as designated/elected Office upon entry into the European phase. Extensive information is provided in the notice from the EPO dated 7 July 2010.
- 5.6.002** If, on filing the international application, a reference to the deposit of biological material complying with Rule 31 EPC was made but no proof of the deposit in the form of a copy of the deposit receipt issued by the depositary institution was submitted, the applicant is strongly advised to do so upon entry into the European phase. The

R. 13bis.3, 13bis.4 PCT
Art. 83 EPC
R. 31, 32 EPC
OJ 2010, 498
OJ 2017, A60, A61
GL/EPO A-IV, 4.1-4.3; F-III, 6.5

deposit receipt shows, in particular, the depositor and the information required under Rule 31(1)(a) and (c) EPC. This information enables the EPO to certify any requests for the issue of a sample under Rule 33 EPC and the examining division to establish whether the application satisfies the requirements under Article 83 EPC.

5.6.003

If the Euro-PCT application was not published by the IB in an official language of the EPO, the biological material referred to in the application will be available upon request to any person (only) from the date of publication of the translation by the EPO. If the applicant wishes to make use of the expert solution under Rule 32 EPC, they must file the statement under Rule 32(1) EPC before the technical preparations for publication of the translation by the EPO are completed (see point 2.22.007). The biological material concerned will then be made available only by the issue of a sample to an independent expert nominated by the requester.

R. 13bis.6 PCT
R. 32, 33 EPC
OJ 2017, A60, A61
GL/EPO A-IV, 4.3

Waiver under Rule 33(2) EPC

5.6.004

The issue of a sample of biological material may be requested by any person under the conditions set out in Rule 33(1) EPC. Rule 33(2) EPC requires that the requester has undertaken vis-à-vis the applicant not to make the biological material, or any biological material derived therefrom, available to any third party and to use that material for experimental purposes only, until such time as the European patent application is refused or withdrawn or deemed to be withdrawn, or before the European patent has expired in all the designated states.

OJ 2010, 498

5.6.005

In Form 1200, Section 8, applicants are given the option of waiving their right to an undertaking by the requester pursuant to Rule 33(2) EPC on condition that they are the depositor of the biological material. The waiver must be submitted in a separate letter in the form of a signed statement containing a specification of the biological material concerned. Such waiver may be filed at any time during the proceedings before the EPO.

Nucleotide and amino acid sequences (Form 1200, Section 9)

5.6.006

Where the Euro-PCT application discloses nucleotide or amino acid sequences, a **sequence listing in electronic form drawn up in compliance with the applicable WIPO standard** must be available to the EPO as a designated/elected Office on expiry of the 31-month time limit. For international applications filed up until 30 June 2022, WIPO Standard ST.25 is applicable; for international applications filed on or after 1 July 2022, WIPO Standard ST.26 is applicable. Extensive information about sequence listing Standard ST.25 is provided in the notice from the EPO dated 18 October 2013. Details of the practice which will be applied for applications filed on or after 1 July 2022 are provided in the decision of the President of the EPO dated 9 December 2021 on the filing of sequence listings and the explanatory notice from the EPO (see OJ 2021, A96 and A97). The sequence listing must

R. 5.2, 13ter.3 PCT
R. 30, 163(3) EPC
OJ 2011, 372
OJ 2013, 542
OJ 2021, A96, A97
GL/EPO A-IV, 5;
E-IX, 2.4.2

be filed in electronic format only; consequently, a sequence listing filed on paper or in PDF format will be disregarded. The following paragraphs describe the practice applicable for international applications filed up until 30 June 2022.

- 5.6.007** As a rule, the required sequence listing will be available to the EPO if it was contained in the international application under Rule 5.2 PCT or filed under Rule 13ter PCT with the EPO acting as ISA/SISA or IPEA (see points 2.23.001 ff). Further, it will also be accessible to the EPO if it is made available by WIPO on PATENTSCOPE and can be downloaded in a usable form.
- 5.6.008** The applicant should in due time verify whether the sequence listing is available to the EPO in the required form and, if it is not, file it before expiry of the 31-month time limit in electronic (TXT) format, preferably via one of the EPO's online filing tools (Online Filing or Online Filing 2.0) or, if not, on a data carrier.
- 5.6.009** If a sequence listing must be filed upon entry into the European phase, the applicant must enclose a statement to the effect that the information contained in the sequence listing does not go beyond the content of the original application documents. This statement can be made by crossing the appropriate box in Section 9.2 of Form 1200.
- 5.6.010** A translation of any free text in a sequence listing which forms part of the description or which was filed subsequently need only be provided if it is not yet available to the EPO in English (see point 5.5.011). If text matter in a sequence listing must be translated, the complete sequence listing complying with WIPO Standard ST.25, including the translated text matter, must be submitted. *R. 5.2(b), 12.1(d), 13ter, 49.5(a-bis) PCT
Art. 14(3) EPC
R. 3 EPC
GL/EPO E-IX, 2.1.3*

What are the consequences of not filing a sequence listing?

- 5.6.011** If a sequence listing in electronic form complying with the applicable WIPO standard is not available to the EPO on expiry of the 31-month time limit, the applicant will be invited to furnish such a sequence listing and pay the late furnishing fee within a non-extendable period of two months. *R. 30(3), 163(3) EPC
Art. 2(1)14a RFees*
- 5.6.012** If the required sequence listing is not filed and the late furnishing fee not paid within the time limit set, the application will be refused. The refusal may be remedied by filing the standard-compliant sequence listing, paying the late furnishing fee and filing a request for further processing. Two fees for further processing are due for the omitted acts: a flat fee for late filing of the standard-compliant sequence listing and 50% of the late furnishing fee for the late payment (see points 5.13.018 and 5.19.001). *Art. 121 EPC
R. 135 EPC*

5.7 Filing fee

5.7.001 Within the 31-month time limit the European filing fee must be paid, this being composed of a basic filing fee and an additional fee which is due for the 36th and each subsequent page of the application. In the case of Euro-PCT applications, the pages forming the basis for the procedure in the European phase are counted as set out below. The additional fee is referred to as the "page fee".

*R. 159(1)(c) EPC
Art. 2(1)1 RFees
OJ 2009, 118, 338
OJ 2019, A3, A6
GL/EPO A-III, 13.1
and E-IX, 2.1.4*

5.7.002 The requirement to pay the European filing fee on entry into the European phase implements the right of the EPO as a designated/elected Office to require payment of a "national fee" under Articles 22(1) and 39(1) PCT.

5.7.003 The basic filing fee is reduced where Form 1200 is filed online (see point 5.1.016).

Page fee

5.7.004 Applicants are advised to compute the correct page fee with the help of Form 1200, Section 6, and in particular the related table, which is part of Form 1200. Precise and correct indications in Section 6 and the table are required to ensure that the EPO does not deem the application to be withdrawn due to payment of an incorrect amount of the page fee.

*R. 38(2) EPC
Art. 2(1)1a RFees
GL/EPO A-III, 13.2*

5.7.005 As a general rule, the page fee is based on the international application as published, regardless of the language of publication. The pages of the description, claims and drawings are counted, plus one page in total for any pages with the bibliographic data and the abstract. Amended claims under Article 19 PCT are also part of the international publication and must be taken into account. They are considered to replace the claims as originally filed unless the applicant explicitly states that the procedure in the European phase is not to be based on them (see first check box in Section 6.1 of Form 1200). Furthermore, any amended pages annexed to the IPER are counted in addition, provided that the IPER is available to the EPO at the 31-month time limit and unless the applicant has either indicated that the further proceedings are **not** to be based on them or clearly stated that they replace the corresponding pages as originally filed (see point 5.7.009). The latter statement can be made by selecting the first check box in Section 6.2.

5.7.006 However, the calculation of the page fee cannot be based on pages of the description or of the claims drafted partly in an official language of the EPO and partly in another language. Thus, special rules for calculating the page fee apply if the international application was not published in an official language of the EPO and amendments were filed upon entry into the European phase.

OJ 2009, 338

5.7.007 If amendments to the **claims** are filed for the procedure in the European phase, the entire set of claims must always be submitted, and this set will form the basis for calculating the page

fee and will replace any earlier set of claims filed. For international applications not published in an official language of the EPO, the page fee is calculated on the basis of the translation of the set of claims as amended and the description of the international application as published.

5.7.008 If amendments to the **description** are filed, the pages of the description are counted as follows: the pages of the description as published, plus any pages submitted as amendments to the description, minus the pages which are replaced by the amendments to the description filed upon entry into the European phase. For international applications not published in an official language of the EPO, the page fee is calculated on the basis of the translation of the entire description, even if it is only amended in part. The same applies where the description has been amended under Article 34 PCT and the applicant wishes these amendments to be taken into consideration in the European phase.

5.7.009 If the application was processed under PCT Chapter II, the amendments filed under Article 34 PCT, which are annexed to the IPER, are to be taken into account in computing the page fee unless the applicant indicates that these pages are not to form the basis for the procedure in the European phase. If the applicant does not clearly state that the amendments under Article 34 PCT replace the corresponding pages as originally filed, the amendments annexed to the IPER are included in the page count in addition to the number of pages in the international publication (see point 5.7.004).

5.7.010 Form 1200 and any sequence listing presented as a separate part of the description in accordance with the requirements of the applicable WIPO standard are disregarded for the purpose of these calculations.

5.7.011 Pages with amendments filed after expiry of the 31-month time limit are not taken into account in calculating the page fee. Consequently, even if amendments submitted after expiry of the 31-month time limit reduce the number of pages already paid for, no refund will be made.

5.7.012 The above general principles also apply to publications of international applications that contain both erroneously filed application documents and correct ones incorporated by reference (Rule 20.6 PCT in conjunction with Rule 20.5bis(d) PCT); see GL/EPO A-III, 13.2, for more detailed information.

What happens if the time limit for payment of the filing fee is not observed?

5.7.013 If the **filing fee**, i.e. the basic filing fee and/or, where applicable, the page fee, is not paid in full in due time, the application is deemed to be withdrawn. Further, the Euro-PCT application will not be considered as comprised in the state of the art under Article 54(3) EPC (see point 5.17.001). The applicant is informed

*Art. 153(5) EPC
R. 160, 165 EPC*

of the loss of rights in a communication under Rules 112(1) and 160(2) EPC.

- 5.7.014** Further processing may be requested within two months from notification of the communication of the loss of rights by payment of the filing fee or the missing part of the filing fee and any page fees, together with the fee for further processing (see also point 5.19.001).
- 5.7.015** If the basic filing fee is not paid (in full) in due time, the fee for further processing amounts to 50% of the basic filing fee. If the page fee is not paid (in full), the fee for further processing amounts to 50% of the page fee for the number of pages for which the page fee has not been paid on time.
- 5.7.016** The applicant may also request reinstatement of rights if the application is deemed withdrawn because the filing fee was not paid in due time. Given the fact that the fee is higher and stricter requirements apply, this remedy has no advantages unless the period for requesting further processing has already expired (see point 5.5.008).
- 5.7.017** If the time limit for requesting further processing has been missed (see point 5.7.014), a request for re-establishment of rights in respect of the period under Rule 135(1) EPC may be filed. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. payment of the filing fee and/or the page fee and of the related fee for further processing, has been paid. Since payment of the filing fee and payment of the page fee constitute a unitary procedural act, only one fee for re-establishment has to be paid (see point 5.19.001). Attention is drawn to the further requirements under Article 122 and Rule 136 EPC for the request to be admissible and allowable.
- Art. 121 EPC
R. 135 EPC
Art. 2(1)12 RFees
R. 49.6 PCT
Art. 122 EPC
R. 136 EPC
Art. 2(1)13 RFees
Art. 122 EPC
R. 136 EPC
Art. 2(1)13 RFees
GL/EPO E-VIII. 3.1.3*

5.8 Designations, extensions and validations

- 5.8.001** A (flat) designation fee must be paid within 31 months of the filing date or, if priority has been claimed, the earliest priority date or within six months of the date of publication of the ISR, whichever time limit expires later. Therefore, unless the publication of the ISR was considerably delayed, the designation fee must be paid within the 31-month time limit.
- 5.8.002** Payment of the designation fee will be effective only in respect of EPC contracting states that were designated for a European patent in the international application on the international filing date (see point 2.11.001).
- 5.8.003** Applicants are reminded that upon filing of the PCT request all PCT contracting states are automatically designated for both a national and, where applicable, a regional patent. Therefore, payment of the (flat) designation fee on entry into the European phase confirms the designation of the EPC contracting states that
- Art. 79(2) EPC
R. 39, 159(1)(d) EPC
Art. 2(1)3 RFees
GL/EPO A-III. 11.2.5;
E-IX. 2.1.4, 2.3.11*

were **EPC and PCT contracting states at the international filing date** (see point 2.11.002). An exception applies where the applicant has withdrawn the designation for a European patent in respect of one or more EPC contracting states during the international phase.

- 5.8.004** If a state for which patent protection is sought was neither an EPC contracting state nor an extension or validation state at the international filing date (see point 5.8.009), the applicant must enter the national phase in the state concerned to obtain patent protection for that state on the basis of the international application. If, however, before entry into force of the EPC for a state an extension or validation agreement with that state was in force, for any application filed before the related extension agreement was terminated (see point 2.12.005), patent protection in that state may still be obtained via the European procedure on the basis of the extension or validation agreement.

What happens if the time limit for payment of the designation fee is not observed?

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|----------------|--|--|
| 5.8.005 | If the designation fee is not paid in due time, the application is deemed withdrawn. The applicant will be informed thereof in a communication under <u>Rules 112(1) and 160(2) EPC</u> . | <u>R. 160 EPC</u>
<u>GL/EPO E-IX, 2.1.4</u> |
| 5.8.006 | Further processing may be requested within two months after notification of the communication of the loss of rights by payment of the designation fee together with the fee for further processing, which amounts to 50% of the designation fee (see also point 5.19.001). | <u>Art. 121 EPC</u>
<u>R. 135 EPC</u>
<u>Art. 2(1)3, 2(1)12 RFees</u> |
| 5.8.007 | Since the designation fee does not form part of the national (filing) fee (see point 5.7.001), applicants cannot request reinstatement of rights under <u>Rule 49.6 PCT</u> . | <u>Art. 22(1) PCT</u>
<u>R. 49.6 PCT</u> |
| 5.8.008 | If the time limit for requesting further processing has been missed (see point 5.8.006), a request for re-establishment of rights in respect of the period under <u>Rule 135(1) EPC</u> may be filed. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. payment of the designation fee under <u>Rule 39 EPC</u> and of the related fee for further processing, has been paid. Attention is drawn to the further requirements under <u>Article 122</u> and <u>Rule 136 EPC</u> for the request to be admissible and allowable (see point 5.19.001). | <u>Art. 122 EPC</u>
<u>R. 136(1) EPC</u>
<u>Art. 2(1)13 RFees</u>
<u>GL/EPO E-VIII, 3.1.3</u> |

How can the Euro-PCT application be extended or validated (Form 1200, Section 11)?

- 5.8.009** Under certain conditions a European patent may be extended to or validated in states which are not EPC contracting states on the international filing date but have concluded an extension or validation agreement with the EPO to that effect.
- OJ 1994, 75
OJ 1996, 82
OJ 1997, 538
OJ 2004, 117, 619
OJ 2007, 406;
OJ 2009, 603
OJ 2010, 10
OJ 2015, A18, A20, A84, A85
OJ 2016, A5, A67
OJ 2017, A84, A85
OJ 2018, A15, A16
GL/EPO A-III, 12, and E-IX, 2.1.4*
- 5.8.010** Extension or validation of a European patent is possible only if the state concerned was designated in the international application for a national patent and an extension or validation agreement with the EPO was in force at the international filing date (see point 2.12.001).
- 5.8.011** Extension or validation is deemed requested for any international application entering the European phase in respect of any state designated in the application with which an extension or validation agreement was in force **at the international filing date**. However, such request is deemed to be withdrawn in respect of each extension or validation state for which no extension or validation fee is paid in due time. The applicant must, therefore, carefully check for which states extension or validation is possible and pay the required fees in due time (see point 5.8.001).
- GL/EPO A-III, 12.2, 12.4*
- 5.8.012** Pursuant to the extension and validation agreements, an extension or validation fee must be paid within the same time limit as applies for payment of the designation fee (see point 5.8.001). There is no flat extension or validation fee.
- 5.8.013** In Form 1200, Section 11, applicants may indicate for which states they intend to pay (an) extension or validation fee(s). In addition to the boxes provided for the states with which an extension agreement was in force on 1 January 2022 – i.e. Bosnia and Herzegovina (BA) and Montenegro (ME) – and those with which a validation agreement was in force on 1 January 2022 – i.e. Cambodia (KH), Morocco (MA), the Republic of Moldova (MD) and Tunisia (TN) – further states may be indicated on condition that an extension or validation agreement with that state was in force **at the filing date** of the international application.
- OJ 2004, 619
OJ 2010, 10
OJ 2016, A5, A67
OJ 2017, A84, A85
OJ 2018, A15, A16*
- 5.8.014** Upon payment, the applicant must specify the extension or validation states for which payment is actually made by indicating the correct fee code which is assigned to each individual extension and validation state.⁶⁶ If EPO Form 1200 is filed online or the EPO's Online Fee Payment or Central Fee Payment service is used for effecting payments, the correct fee code is automatically

⁶⁶ See "Schedule of fees and expenses" available at epo.org/applying/fees/fees.html.

selected when selecting the corresponding extension or validation state in the fee selection process.

What happens if the time limit for payment of extension fees is not observed?

- 5.8.015** If no valid payment is made (see point 5.8.012), any request for extension is deemed withdrawn. *OJ 2009, 603
GL/EPO A-III, 12.1,
12.2*
- 5.8.016** Unlike the payment of designation fees, the payment of extension fees is entirely regulated in the relevant extension agreement and in the national law of the relevant extension state. Rule 112 EPC therefore does not apply. This means that no loss-of-rights communication pointing out the failure to observe the time limit for payment is issued. For the same reasons, the applicant cannot request either an (appealable) decision under Rule 112(2) EPC or the re-establishment of rights under Article 122 EPC. However, the applicant may still pay an extension fee after expiry of the (basic) time limit for payment of the designation fee and the extension fees under the following circumstances:
- 5.8.017** Firstly, within a grace period of two months from expiry of the basic time limit, any extension fee may always be paid with a 50% surcharge.
- 5.8.018** Secondly, where in the absence of payment of the designation fee in due time further processing can be requested in respect of the **designation fee**, the applicant may within two months of notification of the communication of the loss of rights also pay the extension fee(s) with a 50% surcharge.

What happens if the time limit for payment of validation fees is not observed?

- 5.8.019** If a validation fee is not paid in due time (see point 5.8.012), the request for validation is deemed withdrawn. Like the payment of extension fees, the payment of validation fees is entirely regulated in the relevant validation agreements and in the national law of the relevant validation state. Rule 112 EPC and Article 122 EPC therefore do not apply. *OJ 2015, A18, A19, A85
OJ 2016, A5, A67
OJ 2017, A84, A85
OJ 2018, A15, A16*
- 5.8.020** If the validation fee for a state is not paid within the basic period, the applicant can still pay it, together with a 50% surcharge, either within two months of expiry of the basic period ("grace period") or along with the request for further processing concerning the designation fee if this has also not been paid in time and hence within two months of notification of a communication of loss of rights under Rule 112(1) EPC following non-payment of the designation fee.
- 5.8.021** For the reasons set out in point 5.8.019, re-establishment of rights under Article 122 and Rule 136 EPC is not available in respect of the payment of validation fees.

5.9 Supplementary European search

- 5.9.001** As a rule, a supplementary European search must be performed for each international application entering the European phase and a search fee must be paid. For an exception see points 5.9.007 ff. Like any European search report, the supplementary European search report is accompanied by an opinion under Rule 62 EPC – the European search opinion (ESOP) – on whether the application and the invention to which it relates meet the requirements of the EPC. As a further service, the information sheet "Information on Search Strategy" has been annexed to all supplementary European search reports since 1 January 2018 (see point 3.2.012). The supplementary European search report together with the search opinion is known as the "extended (supplementary) European search report" (EESR).
- Art. 153(7) EPC
R. 62, 159(1)(e) EPC
GL/EPO B-II, 4.3;
E-IX, 2.5.3, 3.1
OJ 2017, A106*
- 5.9.002** No search opinion under Rule 62 EPC will be issued where applicants have:
- filed the request for examination in accordance with Rule 159(1)(f) EPC **and**
 - waived the right to be asked under Rule 70(2) EPC whether they wish to proceed further with the application (see points 5.10.002 and 5.10.005)
- before the supplementary European search report has been transmitted to them. Instead, a communication will be issued under Rule 71(1) or 71(3) EPC, either inviting them to correct and/or amend their application or informing them of the text in which the EPO intends to grant the patent.
- GL/EPO B-XI, 7;
C-V; E-IX, 2.5.3*
- 5.9.003** The supplementary European search is performed on the basis of the last set of (amended) claims available to the EPO on expiry of the time limit set in the Rule 161/162 communication (see points 5.4.020 ff.). That set of claims is considered the final set at the time the search is performed (see point 5.4.011). Any claim for which a claim fee due has not been paid will not be searched (see points 5.11.007 ff.).
- R. 161 EPC*
- 5.9.004** If third-party observations were filed during the international phase and forwarded by the IB to the EPO as designated or elected Office, they will be considered in the supplementary European search report, provided they are substantiated and meet all formal requirements. Furthermore, provided they were not filed anonymously and the third party has explicitly so requested, the EPO will expedite the issuing of the first office action in the (European) examination phase.
- OJ 2017, A86
GL/EPO E-VI, 3*
- 5.9.005** If a supplementary European search is carried out, the European Patent Bulletin will mention the date of dispatch of the supplementary European search report. The report is not published, but is available through file inspection.

- 5.9.006** If during the supplementary European search the EPO comes to the conclusion that the application contains more than one independent claim in the same category which does not fall under the exceptions listed under Rule 43(2) EPC, it may issue an invitation to indicate, within a time limit of two months, the basis on which the search is to be carried out (Rule 62a(1) EPC). Similarly, if it is impossible to carry out a meaningful search on the basis of all or some of the subject-matter claimed, the EPO will issue an invitation to file, within a time limit of two months, a statement indicating the subject-matter to be searched. Any declaration of no search or a partial supplementary European search report issued subsequently due to failure to overcome the deficiency takes the place of the supplementary European search report.
- R. 62a, 63 EPC
OJ 2009, 533
GL/EPO B-VIII, 3, 4.1*

No supplementary European search performed

- 5.9.007** As a rule, a supplementary European search is carried out. Dispensation applies and no search fee is to be paid under Rule 159(1)(e) EPC only if the EPO acted as ISA or SISA for the application in the international phase.
- Art. 153(7) EPC
OJ 2009, 594
GL/EPO E-IX, 3.2*
- 5.9.008** If dispensation applies, it also applies where instead of an ISR a declaration of non-establishment under Article 17(2)(a) PCT was issued.
- Art. 17(2)(a) PCT
Art. 153(6) EPC*
- 5.9.009** If no supplementary European search report is drawn up, the Euro-PCT application, upon effective entry into the European phase, immediately falls within the competence of the examining division and will, after formalities examination, be passed on for substantive examination on condition that a request for examination has been validly filed (see points 5.10.001 ff).
- 5.9.010** Any third-party observations filed during the international phase and forwarded by the IB to the EPO as designated or elected Office will be considered in the first office action of the examining division, provided they are substantiated and meet all formal requirements. Provided they were not filed anonymously and the third party has explicitly so requested, the issuing of the first office action will be expedited.
- OJ 2017, A86
GL/EPO E-VI, 3*

Result of supplementary European search and refund of examination fee

- 5.9.011** Where, as is usually the case, applicants have filed the request for examination before transmittal of the supplementary European search report, the EPO will invite them after transmittal of the report to indicate within a six-month time limit whether they wish to proceed further with their application. In the same communication, they will be invited to correct any deficiencies noted in the search opinion accompanying the supplementary European search report. Such a reply is mandatory if the search opinion was negative. If they fail to file a reply in such a case, their application will be deemed to be withdrawn (see points 5.9.013-5.9.014).
- R. 70(2), 70a(2) EPC
GL/EPO E-IX, 2.5.3, B-XI, 7, 8*

- 5.9.012** If applicants **wish to proceed further** to examination, they must notify the EPO accordingly within the six-month time limit indicated in the communication issued by the EPO (see point 5.9.011). Within the same time limit, they may – or, as the case may be, must – comment on the supplementary European search report by filing amendments (see point 5.4.020). If they have expressly waived their right to be asked whether they wish to proceed further to examination (waiver to receive the communication under Rule 70(2) EPC; see point 5.10.005), no search opinion will be issued and competence for the application will pass to the examining division shortly after the supplementary European search report is issued. In this case, the examining division will either issue a communication under Article 94(3) EPC, replacing the search opinion, or a communication under Rule 71(3) EPC if the application is ready for grant.
- 5.9.013** If applicants **do not wish to proceed further** to examination, they may actively withdraw their application or else allow it to lapse by simply not filing a reply within the time limit set in the communication under Rules 70(2) and 70a(2) EPC (see point 5.9.011). The latter will result in the application being deemed withdrawn. *R. 70(3), 70a(3) EPC*
- 5.9.014** Where the application is withdrawn, refused or deemed withdrawn before substantive examination has begun, the examination fee is refunded in full. *Art. 11(a) RFees
OJ 2016, A48, A49
OJ 2019, A82*
- 5.9.015** If applicants actively withdraw their application after substantive examination has begun but before expiry of the time limit for replying to the first invitation issued by the examining division under Article 94(3) EPC or if no such invitation has been issued before the date of the communication under Rule 71(3) EPC, the examination fee is refunded at a rate of 50%. *Art. 11(b) RFees
OJ 2016, A48, A49
OJ 2019, A82
GL/EPO A-VI, 2.5*

Search fee for supplementary European search

- 5.9.016** If a supplementary European search is to be performed, the European search fee must be paid within the 31-month time limit. *R. 159(1)(e) EPC
Art. 2(1)2 RFees*

Reduction of the search fee

- 5.9.017** According to Article 153(7) EPC, the European search fee may be reduced. *Art. 153(7) EPC
GL/EPO A-X, 9.3.1*

The search fee is reduced by a fixed amount of EUR 1 150 (from 1 April 2022: EUR 1 185) where the (S)ISR was drawn up by a European ISA, i.e. the Austrian Patent Office, the Finnish Patent and Registration Office, the Nordic Patent Institute, the Spanish Patent and Trademark Office, the Swedish Intellectual Property Office, the Turkish Patent and Trademark Office or the Visegrad Patent Institute.

However, the reduction applies only to the search fee paid in accordance with Rule 159(1)(e) EPC. Further search fees paid under Rule 164(1) EPC are not reduced and always have to be paid in full (see points 5.15.002 ff).

No reduction of the supplementary search fee applies for PCT applications for which an International Searching Authority other than the ones mentioned above was selected.

Refund of the search fee

- | | | |
|----------------|---|---|
| 5.9.018 | If the supplementary European search report is based on an earlier search report drawn up by the EPO, or if the application claims the priority of a previous application for which a search was carried out by the EPO, (a part of) the fee paid for the supplementary European search may be refunded. The level of the refund depends on the type of earlier search and the extent to which the EPO benefits from the earlier search report when carrying out the supplementary European search. | <u>Art. 9(2) RFees</u>
<u>OJ 2009, 99</u>
<u>OJ 2019, A4</u>
<u>GL/EPO A-X, 10.2.1</u> |
|----------------|---|---|

What happens if the time limit for payment of the search fee is not observed?

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|----------------|--|--|
| 5.9.019 | If the search fee is not paid in due time the Euro-PCT application will be deemed to be withdrawn and the applicant will be informed of this in a communication under <u>Rules 112(1) and 160(2) EPC</u> . | <u>R. 160 EPC</u> |
| 5.9.020 | The loss of rights is deemed not to have ensued if within two months after notification of this communication further processing is requested by payment of the further processing fee, which amounts to 50% of the search fee, together with the missing search fee (see also points 5.13.018 and 5.19.001). | <u>Art. 121 EPC</u>
<u>R. 135 EPC</u>
<u>Art. 2(1)12 RFees</u> |
| 5.9.021 | Since the search fee does not form part of the national (filing) fee (see point 5.7.001), applicants cannot request reinstatement of rights under <u>Rule 49.6 PCT</u> . | <u>Art. 22(1) PCT</u>
<u>R. 49.6 PCT</u> |
| 5.9.022 | If the time limit for requesting further processing has been missed (see point 5.9.020), a request for re-establishment of rights in respect of the period under <u>Rule 135(1) EPC</u> may be filed. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. payment of the search fee under <u>Rule 159(1)(e) EPC</u> and of the fee for further processing, has been paid. Attention is drawn to the further requirements under <u>Article 122</u> and <u>Rule 136 EPC</u> for the request to be admissible and allowable (see points 5.13.022 and 5.19.004). | <u>Art. 122 EPC</u>
<u>R. 136(1) EPC</u>
<u>Art. 2(1)13 RFees</u>
<u>GL/EPO E-VIII, 3.1.3</u> |

5.10 Examination

How is the request for examination filed (Form 1200, Section 4)?

- 5.10.001** A European patent may only be granted if the substantive examination of the application shows it to meet the requirements of the EPC. Substantive examination of an application will only start upon explicit request. *Art. 94 EPC
GL/EPO E-IX, 2.1.4, 2.5.2*
- 5.10.002** The applicant must therefore file a written request for examination. If Form 1200, as recommended, is used (see point 5.1.015), this requirement will always be met since the appropriate check box is preselected (Form 1200, Section 4).
- 5.10.003** The request for examination is only effective if the examination fee has been paid. Therefore, the examination fee must be paid in due time (see points 5.10.004-5.10.007 and 5.10.011).

When must the request for examination be filed? When must the examination fee be paid?

- 5.10.004** The request for examination must be filed and the examination fee paid within 31 months from the filing date or, if priority has been claimed, from the earliest priority date, or up to six months after the date of publication of the ISR, whichever time limit expires later. Therefore, as a rule and unless the ISR was published more than 25 months after the date of filing or the earliest priority date, the request for examination must be filed and the examination fee paid within the 31-month time limit. *R. 70(1), 159(1)(f) EPC
Art. 2(1)6 RFees
GL/EPO C-II, 1.2*
- 5.10.005** In almost all cases, applicants will have to file the request for examination and pay the examination fee before the supplementary European search report is transmitted to them (see point 5.9.011). After transmitting the report to them, the EPO will invite them to indicate whether they wish to proceed further with their application (see point 5.9.011). In order to expedite the European grant proceedings, they can waive their right to be asked whether they wish to proceed further with the application, e.g. by selecting the second check box in Section 12.2 of Form 1200. *R. 70(2) EPC
OJ 2015, A94*
- 5.10.006** On the right to a refund of the examination fee, see points 5.9.014 f.
- 5.10.007** Neither the drawing up of a supplementary European search report (see points 5.9.001 ff) nor publication of the translation of the Euro-PCT application (see points 5.5.001 ff) affects the time limit for filing the request for examination and payment of the examination fee.

Are reductions of the examination fee possible?

5.10.008 According to Rule 6(3) EPC, the examination fee is reduced by 30% for small and medium-sized enterprises, natural persons, non-profit organisations, universities or public research organisations (Rule 6(4) EPC) that have their residence or principal place of business in an EPC contracting state having an official language other than English, French or German, and nationals of such states who are resident abroad, provided that they make the declaration under Rule 6(6) EPC and that the request for examination is made in the official language of that EPC contracting state ("admissible non-EPO language"; Article 14(4) EPC). The declaration under Rule 6(6) EPC can be made by selecting the second check box in Section 4.1 of Form 1200. For the fee reduction to apply in the case of multiple applicants, each of them must be an entity or a natural person within the meaning of Rule 6(4) EPC, and at least one of them must be entitled under Article 14(4) EPC to file in an admissible non-EPO language. Applicants who are nationals of or have their residence or principal place of business in a contracting state having an official language other than English, French or German but who do not meet the definition under Rule 6(4) EPC may still file documents in an admissible non-EPO language, but will not qualify for a fee reduction.

Art. 14(4) EPC
R. 6 EPC
OJ 2014, A4, A23
GL/EPO A-X, 9.2.1,
9.2.3
J.04/18

Euro-PCT(1200E2K) - Draft - Euro-PCT

EP Phase ⓘ	Names ⚠	States ⚠	Biological Material	Documents ⓘ	Fee Payment ⚠	Ar
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Entry into the European Phase

☒ EPO as designated office
☐ EPO as elected office

Examination of the application under Article 94 EPC is hereby requested. The examination fee is being (has been)

☒ Request for examination in an admissible non-EPO language Spanish

☒ The/Each applicant hereby declares that he is an entity or a natural person under Rule 6(4) EPC.

Acceleration of procedure ⓘ

☐ Early processing of the application pursuant to Article 23(2) / 40(2) PCT is hereby requested ("early entry in")
☐ The applicant waives his right to be asked under Rule 70(2) EPC whether he wishes to proceed further with
☐ The applicant waives his right to the communication under Rules 161(1) or (2) and 162 EPC.

Past Record

The language of the international publication is: Spanish

Procedural Language: English

PCT Application Number: PCT/IB2018/123456

PCT Publication Number: WO

EP Application Number: EP

International Filing Date: 1 March 2018 ⓘ

International Searching Authority (ISA)

US United States Patent and Trademark C

International Preliminary Examining Authority (IPEA)

☐ IPEA other than EPO
☒ IPEA is EP

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Reduction if IPER was issued by the EPO

5.10.009 The examination fee is reduced by 75% where the EPO acting as IPEA has already drawn up an international preliminary examination report in respect of the relevant Euro-PCT application unless in the European phase the applicant requests examination of parts of the international application that are exceptionally not covered in the IPER (see points 4.2.027. and 4.2.037. ff).

Art. 14(2) RFees
OJ 2018, A4
GL/EPO A-X, 9.3.2

5.10.010 If the conditions for both this reduction and the 30% reduction under the language arrangement (see point 5.10.008) are fulfilled, the examination fee is first reduced by 75%. The 30% reduction is then applied to the resulting total, and not to the full fee. The total reduction in relation to the full fee is therefore 82.5%.

What happens if the time limit for filing the request for examination and payment of the examination fee is not observed?

5.10.011 If the request for examination is not filed or the examination fee is not paid in due time, the application is deemed to be withdrawn. The applicant is informed of this in a communication under Rules 112(1) and 160(2) EPC. If only the examination fee was not paid in due time, the loss of rights is deemed not to have ensued if within two months after notification of this communication further processing is requested by payment of the further processing fee, which amounts to 50% of the examination fee, together with the missing examination fee (see points 5.16.004 and 5.19.001).

Art. 121 EPC
R. 135, 160(2) EPC
Art. 2(1)12 RFees

5.10.012 If the applicant neither filed the request for examination nor paid the examination fee in due time, further processing must be requested in respect of **both omissions**, i.e. in respect of filing the request for examination and paying the examination fee. It follows that the applicant must not only file the request for examination and pay the examination fee but also pay two fees for further processing, namely the flat fee for further processing in respect of the omitted act (i.e. the request for examination) and 50% of the late-paid examination fee.

GL/EPO E-VIII, 2

5.10.013 Since the request for examination including payment of the examination fee does not form part of the national (filing) fee (see point 5.7.001), applicants cannot request reinstatement of rights under Rule 49.6 PCT.

Art. 22(1) PCT
R. 49.6 PCT

5.10.014 If the time limit for requesting further processing has been missed (see point 5.10.011), a request for re-establishment of rights in respect of the period under Rule 135(1) EPC may be filed. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. filing of the request for examination and/or payment of the examination fee and of the fee for further processing, has been paid. Since filing the request for examination and payment of the examination fee constitute a unitary procedural act, only one fee for re-establishment has to be paid (see points 5.19.001 and 5.19.003). Attention is drawn to the further requirements under Article 122 and Rule 136 EPC for the request to be admissible and allowable.

Art. 122 EPC
R. 136 EPC
Art. 2(1)13 RFees
GL/EPO E-VIII, 3.1.3

5.11 Renewal fee and claims fees

Renewal fee

- 5.11.001** The renewal fees for a pending Euro-PCT application must be paid to the EPO. These fees are due in respect of the third and each subsequent year, calculated from the date of filing of the Euro-PCT application as accorded by the receiving Office. They may not be paid more than three months before they fall due, except for the third-year renewal fee, which may be paid up to six months before it falls due. As a consequence, it may be paid together with the other fees payable within the 31-month time limit.
- Art. 11(3) PCT
Art. 86(1), (2) EPC
R. 51(1), (2),
159(1)(g) EPC
Art. 2(1)4, 2(1)5
RFees
GL/EPO A-X, 5.2.4*
- 5.11.002** If the renewal fee for the third year falls due within the 31-month time limit for entry into the European phase, the due date is deferred and the fee may be paid without surcharge up to expiry of the 31-month time limit. If a renewal fee is not paid on time, it may still be paid within six months of the due date ("grace period"), provided it is paid with a 50% surcharge ("additional fee"). If the third-year renewal fee falls due on expiry of the 31-month time limit but is not paid, this six-month period is computed from the date of expiry of the 31-month time limit.
- R. 159(1)(g),
51(2) EPC*

What happens if the time limit for payment of the renewal fee and the additional fee is not observed?

- 5.11.003** If the renewal fee is not paid within the six-month grace period the application is deemed to be withdrawn and the applicant is informed of this in a communication under Rule 112(1) EPC. As a means of redress, the applicant can file a request for re-establishment of rights in respect of the period for paying the renewal fee and the additional fee. The request is not deemed to have been filed until the fee for re-establishment relating to the omitted act, i.e. paying the renewal fee with the additional fee, has been paid. Attention is drawn to the further requirements under Article 122 and Rule 136 EPC for the request to be admissible and allowable (see point 5.15.010).
- Art. 122 EPC
R. 51(2), 136 EPC
Art. 2(1)13 RFees
OJ 2016, A102,
A103*

Claims fees

- 5.11.004** If the application documents on which the European grant procedure is to be based contain more than fifteen claims, a claims fee is payable within the 31-month period in respect of the sixteenth and each subsequent claim, and a higher claims fee is payable in respect of the 51st and each subsequent claim.
- R. 162 EPC
Art. 2(1)15 RFees
GL/EPO A-III, 9;
E-IX, 2.1.1 and 2.3.8*
- 5.11.005** The claims fees must be calculated on the basis of the number of claims contained in the application in the version that is, in accordance with the indications in Form 1200, to be taken as the basis for processing in the European phase (see point 5.4.032). However, where the number of claims changes as a consequence of a later (further) amendment filed before expiry of the time limit set in the Rule 161/162 communication, the number of claims fees
- OJ 2016, A102,
A103*

due is computed on the basis of the claims on file upon expiry of the six-month period set in the Rule 161/162 communication (see point 5.4.034). For further information, please refer to the examples given in OJ 2016, A103, points 3.1 and 3.2.

- 5.11.006** If the applicant has already paid claims fees within the 31-month period, and the number of claims is reduced as a result of amendments filed within the six-month time limit set in the Rule 161/162 communication, any claims fees paid in excess of those due will be refunded after expiry of that time limit (see point 5.4.035). *R. 162(3) EPC*

What happens if the time limit for payment of the claims fee is not observed?

- 5.11.007** Where applicants fail to pay (the correct amount of) the claims fees within the 31-month period, the EPO will invite them in the Rule 161/162 communication to pay the missing amount within a non-extendable period of six months (see point 5.4.033). *R. 162(2) EPC
GL/EPO E-IX, 2.3.8*
- 5.11.008** If additional claims fees become due as a result of amendments filed within the six-month period, applicants must pay these further claims fees within that same period, since no further invitation under Rule 162 EPC will be issued (see point 5.4.032).
- 5.11.009** Where a claims fee is not paid within the six-month period, the claim concerned is deemed to be abandoned. In such cases, applicants are informed of the loss of rights in a communication under Rule 112(1) EPC. Further processing can be requested within two months of notification of the communication by payment of the further processing fee, which amounts to 50% of the claims fee(s) due, together with the missing claims fee(s) (see points 5.19.001 and 5.19.003). Features of a claim deemed to have been abandoned and which are not otherwise to be found in the description or drawings cannot subsequently be reintroduced into the application and, in particular, into the claims (see point 5.4.036). *Art. 121 EPC
R. 135, 162(4) EPC
Art. 2(1)12 RFees
J.15/88 (OJ 1990, 445)*

5.12 Filing of other documents

What happens if data regarding the inventor or an applicant is missing?

- 5.12.001** If within the 31-month time limit the inventor has not been designated or certain information regarding the inventor or any applicant is missing, the EPO will invite the applicant to file the designation of the inventor or to submit the missing data within two months of the notification of a communication under Rule 163(1) or (4) EPC (see point 2.9.002). *Art. 4(1)(iii), (v),
22(1), 27(2) PCT
Art. 81 EPC
R. 19, 163(1)(4) EPC
OJ 2021, A3, A12
GL/EPO E-IX, 2.3.1,
2.3.4*

What happens if the requirement to file any missing data regarding the inventor or an applicant is not observed?

- 5.12.002** If within the two-month time limit set in the invitation the missing data have not been filed, the application is refused. *R. 163(6) EPC*
- 5.12.003** The refusal may be remedied by a request for further processing. The request will be granted if within two months of notification of the decision the missing data are filed and the fee for further processing is paid. *Art. 121 EPC
R. 135 EPC
Art. 2(1)12 RFees*

Certificate of exhibition

- 5.12.004** Where relevant, the certificate of exhibition is to be filed within the 31-month time limit. If the document is not filed in due time, the applicant's disclosure at the relevant exhibition will be taken into account for the purposes of establishing whether the invention claimed is new under Article 54 EPC. The relevant exhibitions falling within the terms of the EPC are published every year in the Official Journal. *Art. 54, 55(2) EPC
R. 25, 159(1)(h) EPC
GL/EPO A-IV, 3*
- 5.12.005** If the certificate is not filed in due time, the applicant is informed of this in a communication under Rule 112(1) EPC. The omission may be remedied by a request for further processing. The request will be granted if within two months of notification of the communication the certificate is furnished and the fee for further processing is paid. *Art. 121 EPC
R. 135 EPC
Art. 2(1)12 RFees*

5.13 Priority claim

- 5.13.001** An international application may claim the priority of an earlier application that was filed in any state party to the Paris Convention for the Protection of Industrial Property or for any member of the World Trade Organization (see points 2.14.001 ff). The file number of the earlier application, if known at the time of filing the international application, is to be provided in Box VI of the PCT request form. In the proceedings before the EPO as designated/elected Office, the priority application is referred to as the "previous application", which corresponds to the terminology used in the EPC. *R. 4.1(b)(i), 4.10, 17.1, 17.2 PCT
Art. 87(1)(b), 88(1) EPC
R. 163(2)(6), 53 EPC
GL/EPO E-IX, 2.3.5*
- 5.13.002** The applicant is required to provide the file number and to file a certified copy of the previous application with the receiving Office or the IB during the international phase, i.e. within 16 months of the (earliest) priority date (see point 2.16.001), so that both will be available to the EPO on entry into the European phase (see points 2.16.001 ff and 5.13.008). The IB will normally provide the EPO with the certified copy of the previous application prior to expiry of the 31-month time limit. It will also upload the priority document to its PATENTSCOPE database, where it can be accessed by the EPO as soon as the international application is published. If the EPO receives the priority document from the IB or has access to it via PATENTSCOPE, the applicant does not need to furnish it to the EPO again. *R. 17.1, R. 17.2 PCT
GL/EPO E-IX, 2.3.5.1*

5.13.003 If the international application was filed outside the priority period, a request for restoration of the right of priority may have to be (re)filed with the EPO as designated/elected Office (see points 5.13.017 ff). *R. 49ter.2 PCT*
OJ 2007, 692

When is there an obligation to file the priority document with the EPO?

5.13.004 If during the international phase the applicant did not submit a certified copy of the previous application (the "priority document") or indicate the file number of the application from which priority is claimed, they must provide either or both of them upon entry into the European phase. Where the previous application is a European patent application or an international application filed with the EPO as receiving Office, the EPO will include a priority document in the file of the Euro-PCT application free of charge (see point 5.13.008).

5.13.005 A priority document may be filed electronically with the EPO using Online Filing or Online Filing 2.0, provided it has been digitally signed by the issuing authority and the EPO can accept and verify the signature. The electronically filed priority document must be issued in a PDF format which complies with the Administrative Instructions under the PCT, Part 7 and Annex F. It cannot be filed by fax or using the EPO web-form filing service. By way of example, the EPO accepts electronic priority documents issued and digitally signed by the patent offices of the USA, Brazil, Portugal, Italy, Austria, France and Poland. Further offices are expected to follow. *OJ 2019, A18*
OJ 2021, A42, A43
GL/EPO A-III, 6.7

5.13.006 Since 1 November 2018, the EPO, if so requested by applicants in relation to international applications entering the European phase before the EPO as designated or elected Office, has been retrieving priority documents via the Digital Access Service (DAS), provided the previous application was filed with another office participating in DAS. To make use of this service, applicants first ask the "office of first filing" (OFF) with which the previous application was filed to make the priority document available via DAS, and then ask the EPO to retrieve a copy using the access code assigned by the OFF. This access code can be communicated to the EPO using EPO Form 1013. DAS is free of charge for applicants. As at 1 January 2022, 33 offices were listed as participating, and their number is expected to increase.⁶⁷ *OJ 2019, A27*
OJ 2021, A83, A84
GL/EPO A-III, 6.7

5.13.007 Moreover, for international applications which have entered the European phase before 1 January 2022, the EPO as designated/elected Office will include a copy of the priority application free of charge in the file of a Euro-PCT application even without having received a copy from the IB or been requested to retrieve the priority document via DAS. The applicant will be informed of this inclusion unless the previous application is a European application or an international application filed with the *R. 53(2) EPC*
OJ 2021, A83, A84
GL/EPO A-III, 6.7, E-
IX, 2.3.5.1

⁶⁷ For a list of the participating offices, see wipo.int/das/en/participating_offices.html.

EPO as receiving Office. This service is provided on condition that the applicant has informed the EPO of the application number and only if the priority application is:

- a European patent application;
- an international application filed with the EPO as receiving Office;
- a Chinese patent or utility model application;
- a Korean patent or utility model application;
- a United States provisional or non-provisional patent application.

For Euro-PCT applications entering the European phase on or after 1 January 2022, the EPO will discontinue to include any US, Korean or Chinese priority documents in the file of the Euro-PCT application because the respective agreements for the electronic exchange of priority documents (PDX) have been terminated. In such cases, if the priority document is still missing on entry into the European phase, the applicant will be duly notified and may submit the US, Korean or Chinese priority document(s) via DAS or by filing the certified copy under Rule 53(1) EPC.

What happens if the requirement to file the priority document or the file number is not observed?

- | | | |
|-----------------|---|--|
| 5.13.008 | Where a certified copy of the previous application or, where no copy must be filed (see points 5.13.006 and 5.13.007), the file number has not yet been submitted on entry into the European phase, the applicant will be invited to furnish that certified copy or number within two months of notification of a communication under <u>Rule 163(2) EPC</u> . This time limit cannot be extended. If the certified copy or the file number is not submitted within that time limit, the priority right is lost. | <u>R. 163(2)(6) EPC</u> |
| 5.13.009 | The loss of rights may be remedied by requesting further processing. The request will be granted if within two months of notification of the loss of rights the certified copy of the previous application or the file number is filed and the fee for further processing is paid (see also point 5.19.001). | <u>Art. 121 EPC</u>
<u>R. 135 EPC</u>
<u>Art. 2(1)12 RFees</u> |
| 5.13.010 | If a priority document has not been received from the IB (see point 5.13.002 and is missing on PATENTSCOPE but the applicant has requested the receiving Office to forward the priority document(s) to the IB or requested the IB to obtain the certified copy of the previous application(s) from DAS, no loss of rights will occur. In such case substantive examination may nevertheless begin, but the decision to grant will not be taken until the priority document is furnished. The applicant is informed accordingly. | <u>R. 17.1(b),</u>
<u>17.1(b-bis),</u>
<u>17.2(a) PCT</u>
<u>GL/EPO E-IX</u>
<u>2.3.5.1; F-VI, 2.1</u> |

Is it necessary to file a translation of the priority document?

- 5.13.011** Where the priority document is not in English, French or German, and the validity of the priority claim is relevant for determining whether the invention concerned is patentable, a translation in one of these languages must be submitted at the invitation of the EPO. If a translation is already available to the EPO, it will not issue an invitation. *R. 51bis.1(e) PCT
R. 53(3) EPC
OJ 2013, 150
GL/EPO A-III, 6.8;
F-VI, 3.4*
- 5.13.012** The translation need not necessarily be in the language of the proceedings as long as it is in English, French or German (see point 5.1.013).
- 5.13.013** Where the international application is a complete translation of the previous application, a declaration to that effect is sufficient and no invitation to file a translation will be issued (Form 1200, Section 7.3). This means that if the priority application is, for instance, a national application filed in Spanish, the applicant may declare that the international application filed in, for instance, English is a complete translation of the Spanish priority application. A translation from Spanish into an official language of the EPO is in that case not required. *R. 53(3) EPC
GL/EPO A-III, 6.8.6*
- 5.13.014** A translation of the priority document may also be requested where the application was filed (in part) on the basis of incorporation by reference. *R. 51bis.1(e)(ii) PCT*

What happens if the requirement to file the translation or declaration is not observed?

- 5.13.015** If the applicant does not provide the translation of the priority document in time, the right of priority is lost and the applicant is informed accordingly. This has the effect that the intermediate document(s) which resulted in the validity of the priority claimed becoming relevant for the assessment of patentability will belong to the prior art under Article 54(2) or Article 54(3) EPC, as applicable. *Art. 54(2)(3) EPC
R. 53(3) EPC
OJ 2013, 150
GL/EPO A-III, 6.10,
F-VI, 3.4*
- 5.13.016** If the priority right is lost, further processing can be requested and will be granted if within two months of notification of the loss of rights the required translation or declaration is filed and the fee for further processing paid. *Art. 121 EPC
R. 135 EPC
Art. 2(1)12 RFees
GL/EPO A-III, 6.8.3*

Restoration of priority under Rule 49ter PCT

- 5.13.017** If the international application was filed more than 12 months from the filing date of the previous application whose priority is claimed, the applicant may file a request for restoration of priority with the EPO as receiving Office and as designated/elected Office. For information on the procedure before the EPO as receiving Office see point 2.15.001. *R. 26bis.3 PCT
R. 49ter.1 and .2 PCT
Art. 122 EPC
OJ 2007, 692
GL/EPO E-IX,
2.3.5.3*
- 5.13.018** The EPO in its function both as receiving Office and as designated/ elected Office will grant such a request only if the

failure to claim the right of priority within the priority period occurred *in spite of due care required by the circumstances having been taken*. The requirement of due care is applied by the EPO in accordance with its standing practice under Article 122 EPC. The second criterion referred to in the PCT, whether the failure was *unintentional*, does not play a role in the procedures before the EPO. Therefore, a request for restoration of the priority right that was granted by the receiving Office under the "unintentional" criterion does not have any effect before the EPO as designated/elected Office (see point 5.13.021).

5.13.019 As set out hereafter (see points 5.13.020 ff), if the applicant has already filed a request for restoration of priority with the receiving Office, a (new) request need not always be filed upon entry into the European phase.

5.13.020 If the priority right was restored by the receiving Office under the "due care" criterion, no new request need be filed with the EPO as designated/elected Office, since the EPO will, as a rule, recognise the decision of the receiving Office. If, however, the EPO has reasonable doubt that the requirements for grant were met, it will notify the applicant accordingly. In this communication the reasons for such doubt will be indicated and a time limit will be set within which the applicant may submit comments.

5.13.021 If the priority right was restored by the receiving Office under the "unintentional" criterion, a new request needs to be filed with the EPO as designated/elected Office, since the EPO is not bound by the decision of any receiving Office under the "unintentional" criterion (see points 5.13.018 and 5.13.023).

5.13.022 The EPO as designated/elected Office will grant a request for restoration of the priority right only if the following requirements are met:

R. 49ter PCT

- the filing date of the international application is within two months of the date on which the priority period expired;
- the failure to claim the right of priority within the priority period occurred in spite of all due care required by the circumstances having been taken;
- the request for restoration of priority is filed within one month of the date on which the 31-month time limit for entry into the European phase expired or of the effective date of early entry into the European phase; where the international application is deemed to be withdrawn under Rule 160(1) EPC for failure to comply with a requirement under Rule 159(1) EPC, the request may still be filed together with an on-time request for further processing in respect of the 31-month time limit under Rule 159(1) EPC or, failing this, with an on-time request for re-establishment of rights in respect of the period for requesting further processing;
- the fee for restoration of priority levied by the EPO is duly paid, the time limit for doing so being the same as for the request for restoration of priority;

R. 26bis.2(c)(iii) PCT

R. 49ter.2(a) PCT
Art. 122 EPC

R. 49ter.2(b)(i) PCT

R. 49ter.2(b)(iii), (d) PCT, R. 136(1) EPC
Art. 2(1)13 RFees

- the request for restoration of priority is accompanied by a statement of reasons for the failure to file the international application within the priority period and preferably by any declaration or other evidence in support of the statement of reasons. *R. 49ter.2(b)(ii) PCT*
R. 136(2) EPC

5.13.023 If the applicant wants the priority claim to be valid in the procedure before the EPO as designated/elected Office, a request for restoration must always be filed if, in the procedure before the receiving Office:

- no request for restoration of the priority right was filed;
- the request for restoration of the priority right filed with the receiving Office was rejected;
- a request for restoration of the priority right filed with the receiving Office was granted only under the "unintentional" criterion. *R. 49ter.1(b) PCT*

Incorporation by reference of a correct element or part under Rule 20.5bis(d) PCT

5.13.024 Since 1 July 2020, Rule 20.5bis(d) PCT has allowed applicants filing an erroneous element or part of an international application to incorporate the correct element or part by reference, provided it is completely contained in a priority application validly claimed on the date of filing. The initially accorded international filing date is then maintained, and the international application therefore contains both the erroneously filed application documents and the correct application documents. The EPO has notified WIPO that this provision is incompatible with the current legal framework under the EPC and will therefore not be applied. *R. 20.5bis(d) PCT*,
R. 20.6 PCT,
R. 20.8(a-bis) and (b-bis) PCT
OJ 2020, A81

5.13.025 If a request for incorporation by reference of a correct element or part is granted by the receiving Office in the international phase, this incorporation will therefore not be effective in proceedings before the EPO as designated/elected Office. In such cases, the EPO will consider the filing date of the international application to be the date on which the correct element or part was received and the application as filed to include only the correct application documents. The EPO will inform the applicant accordingly in a communication under Rule 20.8(c) PCT and Rule 82ter.1(c) and (d) PCT. Within two months of notification of the communication, the applicant may request that the correct application documents be disregarded under Rule 82ter.1(d) PCT. The proceedings before the EPO as designated or elected Office will then be based on the original (erroneous) application documents, and the initial filing date will be maintained. The EPO will issue an interlocutory decision, confirming the initial filing date and informing the applicant that the correct application documents will be disregarded. In order to save time, applicants can abridge the procedure by clearly indicating on entry into the European phase whether they wish the erroneously filed application documents or the correct ones to be taken as the basis for the rest of the proceedings before the EPO as designated or elected Office. In *R. 20.5bis(d), 20.6, 20.8(c) and R. 82ter.1(d) PCT*
OJ 2020, A81, V. GL/EPO.C-III.1.3, E-IX, 2.9.4

such cases, the communication under Rule 20.8(c) PCT and Rule 82ter.1(c) and (d) PCT will not be issued. Instead, the EPO will immediately send confirmation that the further proceedings will be based on the chosen application documents and inform the applicant of the date of filing which applies as a result.

- 5.13.026** If the correct element or part was furnished by the applicant in the international phase with the purpose of correcting the international application and no incorporation by reference was requested, the decision of the receiving Office to allow such correction will also be effective in proceedings before the EPO as designated/elected Office. The international filing date in such cases will be either the date on which all requirements under Article 11 PCT were met (if no international filing date could be accorded before receipt of the correct element or part) or the date on which the correct element or part was received by the receiving Office.

Art. 11 PCT
R. 20.5bis(b) or (c)
PCT

5.14 Review by the EPO as designated/elected Office and rectification of errors made by the receiving Office or by the IB

- 5.14.001** The EPO as designated or elected Office may review or rectify certain acts of the receiving Office or the IB in the international phase. As regards review of the grant of a request for restoration of the right of priority by the receiving Office, see points 5.13.017 ff. As regards review of the grant of a request for incorporation by reference of a correct element or part under Rule 20.5bis(d) PCT, see point 5.13.024 ff.

Review by the EPO as designated Office under Article 25 PCT

- 5.14.002** At the request of the applicant, the EPO may review whether a refusal by the receiving Office to accord a filing date, or a declaration on the part of the receiving Office that an international application or the designation of a state is considered withdrawn, or a finding by the IB under Article 12(3) PCT is the result of an error or omission on the part of the authority concerned, in which case the Euro-PCT application can proceed as a European application.

Art. 25 PCT
R. 51, 82ter PCT
R. 159(2) EPC
GL/EPO.E-IX.2.9.1

- 5.14.003** To obtain such a review by the EPO as designated Office, applicants must take the following steps:
- The request to the IB under Article 25(1) PCT to send copies of documents in the files promptly to the EPO as designated Office must be made within the two-month time limit under Rule 51.1 PCT.
 - The filing fee under Rule 159(1)(c) EPC must be paid and, where required, a translation of the Euro-PCT application furnished within the same two-month time limit (Article 25(2), Rule 51.3 PCT). Applicants are recommended to undertake the remaining steps for entry into the European

phase under Rule 159(1) EPC at the same time, possibly together with a request for early processing under Article 23(2) PCT (see points 5.1.022 ff, 5.2.005 ff, 5.5.001 ff).

Review by the EPO as designated/elected Office under Article 24 PCT

- 5.14.004** Pursuant to Article 24(2) PCT the EPO as designated/elected Office may even maintain the application as a European application if this is not required by virtue of the provision in Article 25(2) PCT. The filing of a request under Article 24(2) PCT is governed by the same requirements as a request for review under Article 25(2) PCT, with the exception that the two-month time limit under Rules 51.1 and 51.3 PCT does not apply. The time limit for making a request to be excused under Article 24(2) PCT is subject to national law. Such request may be combined with a request for re-establishment of rights or further processing.
- Art. 24(2), 48(2) PCT
R. 82bis PCT
Art. 122, 121 EPC
OJ 1984, 565
(Reasons 4)
J 19/16 (Reasons 6)
GL/EPO E-IX, 2.9.2*

May errors made by the receiving Office or by the IB be rectified?

- 5.14.005** If the applicant proves to the satisfaction of the EPO that the international filing date is incorrect owing to an error made by the receiving Office or that the priority claim has been erroneously considered by the receiving Office or the International Bureau not to have been made, and if the error is an error such that, had it been made by the EPO itself, the EPO would rectify it under EPC law or practice, the EPO must rectify the error and treat the international application as if it had been accorded the rectified international filing date or as if the priority claim had not been considered not to have been made.
- R. 82ter.1(a) PCT
GL/EPO E-IX, 2.9.3*
- 5.14.006** Further, if a receiving Office accords the international filing date on the basis of incorporation by reference (see points 2.4.001 ff), the EPO as designated/elected Office will review this finding in terms of whether the requirements listed in Rule 82ter.1(b)(i)-(iii) PCT have been complied with. In particular, the EPO will consider whether the element or part incorporated by reference was indeed missing. For instance, where the international application contained a description and a claim or claims on the international filing date, it is not possible to replace these elements with elements from a priority application. It is also not possible to add elements from a priority application if this would result in the international application having, for instance, two (or more) descriptions or two (or more) sets of claims. Since 1 July 2020, Rule 20.5bis(d) PCT has allowed applicants filing an erroneous element or part of an international application to incorporate the correct element or part by reference, provided it is completely contained in a priority application validly claimed on the date of filing. The EPO has filed a notification of incompatibility of this new rule with the EPC and will therefore continue its practice outlined above (see point 5.13.025).
- Art. 11(1)(iii)(d), (e) PCT
R. 4.18, 20.6,
82ter.1(b) PCT
GL/EPO C-III, 1.2,
1.3*

5.14.007	<p>If the EPO does not agree with the finding of the receiving Office, it will notify the applicant that it intends to consider the (later) date on which the missing element or part was furnished as the international filing date in the European patent grant procedure. The applicant will be given the opportunity to comment. Further, in the case of missing parts, the applicant may also request that the missing part concerned be disregarded in the European patent grant procedure. In that case, the missing part will be considered not to have been furnished and the EPO will not treat the international application as if the international filing date had been corrected.</p>	<p><i>R. 82ter.1(c), (d)</i> <i>PCT</i></p>
5.15 Lack of unity		
5.15.001	<p>Where the Euro-PCT application does not meet the requirement of unity of invention, the procedure laid down in <u>Rule 164 EPC</u> applies upon entry into the European phase.</p>	
5.15.002	<p><u>Rule 164 EPC</u> provides the applicant with an opportunity to pay upon invitation, within a two-month period, a further search fee for any invention which has not been searched by the (Supplementary) International Searching Authority in the international phase but which the applicant claims upon expiry of the time limit set in the communication under <u>Rules 161 and 162 EPC</u>. This opportunity is available both where a supplementary European search is to be carried out (the EPO was not the (S)ISA) and where the supplementary European search is dispensed with (the EPO acted as (S)ISA). The further search fees are not subject to the fee reduction under <u>Article 153(7) EPC</u> (see point 5.9.017), which applies only to the search fee payable under <u>Rule 159(1)(e) EPC</u>. Moreover, any further search fees cannot be validly paid until an invitation pursuant to <u>Rule 164 EPC</u> has been issued. The inventions for which a further search fee is paid will be searched by the EPO. The search will not be based on any amendments filed in response to an invitation to pay search fees.</p>	<p><i>Art. 82 EPC</i> <i>R. 164 EPC</i> <i>GL/EPO B-VII, 2.3</i> <i>GL/EPO C-III, 2.3</i> <i>GL/EPO E-IX, 4.2</i> <i>G 2/92</i></p>
5.15.003	<p>Where applicants use automatic debiting, all search fees to be paid under <u>Rule 164 EPC</u> will be automatically debited on the last day of the two-month period set in the invitation. If they do not wish to pay any or some of the fees, they must therefore notify the EPO accordingly.</p>	<p><i>ADA, Annex A.1,</i> <i>point 4, Annex A.2,</i> <i>item I and I.2</i></p>
5.15.004	<p>The further search fees must be paid within the non-extendable two-month time limit set in the invitation. This time limit is excluded from further processing, but re-establishment of rights may be requested.</p>	<p><i>Art. 122 EPC</i> <i>R. 135(2) EPC</i></p>
5.15.005	<p>If applicants disagree with the finding of lack of unity made by the search division or the examining division, they may request the examining division to review this finding and to refund the search fees paid.</p>	<p><i>R. 164(5) EPC</i></p>
5.15.006	<p>An invention that has not been searched by the EPO cannot be prosecuted in examination. If applicants do not take the opportunity to pay search fees under <u>Rule 164 EPC</u>, they will be</p>	<p><i>GL/EPO C-III, 3.1.1,</i> <i>3.1.2, 3.2</i> <i>G 2/92</i></p>

requested by the examining division to delete any unsearched subject-matter. Any searched or unsearched invention which is not prosecuted in the examination proceedings may be pursued in a divisional application.

Supplementary European search to be performed: the EPO did not act as (S)ISA

5.15.007 If the application documents which are to serve as the basis for the supplementary European search do not comply with the requirement of unity of invention, applicants are invited under Rule 164(1)(b) EPC to pay a further search fee for each invention other than the first invention mentioned in the claims. If they wish to pay further search fees in response to the invitation under Rule 164(1)(b) EPC, they must do so within the time limit of two months set in the invitation. This period is excluded from further processing under Rule 135(2) EPC.

5.15.008 Together with the invitation, a partial supplementary European search report together with a provisional opinion on the patentability of the invention (or unitary group of inventions) is drawn up on the invention or group of inventions first mentioned in the claims.

R. 164(1)(a) EPC
OJ 2017, A20

5.15.009 The supplementary European search report is then drawn up for the parts of the application relating to inventions for which search fees have been paid. In reply to the accompanying search opinion, the applicant must select, from all inventions searched by the EPO, a single invention to be prosecuted in the European grant procedure. For the other inventions the applicant may file divisional applications.

R. 164(1)(c) EPC
GL/EPO C-III, 3.1.2,
3.2
G 2/92

5.15.010 Although the EPO is in no way bound by the opinion of the ISA on the issue of whether the application meets the requirement of unity, the EPO will in many cases share that opinion, given that the practices of the ISAs are based on the same guidelines (Chapter 10 of the ISPE Guidelines). Therefore, where the (S)ISA considered the requirement of unity not to be met, the applicant is advised to amend the application in due time (i.e. before expiry of the period under Rule 161(2) EPC) in such a way that the invention on which the applicant wishes the supplementary European search and the examination to be based is that first mentioned in the claims, since if the EPO agrees with the ISA on lack of unity, this invention will then be searched on the basis of the search fee paid according to Rule 159(1)(e) EPC, without the need to pay any additional search fees according to Rule 164(1) EPC, which do not qualify for a fee reduction according to Article 153(7) EPC.

No supplementary search performed: the EPO acted as (S)ISA

- 5.15.011** If the supplementary European search report is dispensed with, the examining division will start substantive examination upon expiry of the time limit set in the communication under Rules 161 and 162 EPC. Where it considers that an invention is claimed which was not searched by the EPO in the international phase, it will invite the applicant to pay a search fee in respect of that invention. *Art. 19, 34 PCT
R. 161(1), 164(2)
EPC
GL/EPO C-III, 2.3*
- 5.15.012** The examining division will send the applicant the results of any search carried out in respect of an invention for which a search fee has been paid. If it has not found any deficiencies, the results will be accompanied by a communication informing the applicant of the text in which it intends to grant the patent and of the related bibliographic data (Rule 71(3) EPC). If it has found deficiencies, the results will be accompanied by a communication inviting the applicant to comment on those deficiencies and, where appropriate, amend the application (Article 94(3) EPC and Rule 71(1) and (2) EPC). Where appropriate, the applicant must limit the application to a single searched invention to be prosecuted in the patent grant procedure. For any searched or unsearched subject-matter, divisional applications may be filed. *R. 164(2) EPC
GL/EPO C-III, 2.3, 3.2*
- 5.16 Publication of the Euro-PCT application by the EPO**
- 5.16.001** In principle, the international publication of an international application takes the place of the publication of a European patent application. *Art. 29(1), (2) PCT
Art. 67, 153(3), (4)
EPC
GL/EPO E-IX, 2.5.1*
- 5.16.002** In accordance with this principle, a Euro-PCT application published by the IB in an **official language of the EPO** enjoys, subject to the provisions of Article 67(3) EPC, provisional protection **as from the date of the international publication**. The EPO will, once the application has entered the European phase, notify the applicant of the publication of the bibliographic data of the Euro-PCT application in the European Patent Bulletin and confirm that the application, subject to the provisions of Article 67(2) and (3) EPC, enjoys provisional protection in the individual EPC contracting states.
- 5.16.003** If the Euro-PCT application was published by the IB in a **language other than one of the three official languages** of the EPO, the EPO will publish the translation of the Euro-PCT application submitted by the applicant upon entry into the European phase (see point 5.5.001). In that case the provisional protection is, subject to Article 67(2) and (3) EPC, only effective **as from the date of publication of the translation** by the EPO.
- 5.16.004** The translation of the international application is published together with the bibliographic data as an A-document and *R. 48.2 PCT*

includes all documents that were part of the international publication:

- the description as originally filed;
- the claims as originally filed;
- any claims amended under Article 19 PCT, including the statement under Article 19 PCT;
- any drawings as originally filed;
- the sequence listing forming part of the description (see point 5.6.010);
- the abstract;
- any appendices to the application;
- any correct parts or elements incorporated by reference under Rule 20.6 PCT in conjunction with Rule 20.5bis(d) PCT;
- any erroneously filed parts or elements, where correct parts or elements were incorporated by reference under Rule 20.6 PCT in conjunction with Rule 20.5bis(d) PCT;
- any certificate(s) of the deposit of biological material;
- the translation of the ISR.

The mandatory translation of the annexes to the IPER and any amendments to the application documents filed on or after entry into the European phase are **not** published.

5.16.005 Pursuant to Article 153(6) EPC the international search report takes the place of the European search report. Once the supplementary European search report has been drawn up, this will be mentioned in the European Patent Bulletin, Part I.1(4). The supplementary search report itself is not published but is available via public file inspection.

5.17 State of the art

5.17.001 Upon payment of the filing fee (including any page fee) and, where required, receipt of the translation, an international application is considered as comprised in the state of the art under Article 54(3) EPC (see points 5.5.006 and 5.7.013). This means that a Euro-PCT application does not need to fulfil all conditions for entry into the European phase in order to be considered a conflicting European application under Article 54(3) EPC. Any Euro-PCT applications complying with Rule 165 EPC are published in the European Patent Bulletin in Section I.2(2).

Art. 54(3), 153(5) EPC
R. 165 EPC
OJ 2021, A51
GL/EPO G-IV, 5.2

5.18 Divisional applications

- 5.18.001** One or more divisional applications can be filed for any earlier Euro-PCT application that is pending before the EPO as designated or elected Office. A Euro-PCT application is pending before the EPO as designated or elected Office, and a divisional application may be filed, once the applicant has fulfilled all the requirements for entering the European phase, either after expiry of the 31-month period under Rule 159(1) EPC or on the day a request for early processing under Article 23(2) or 40(2) PCT has become effective.

Art. 76 EPC
R. 36 EPC
OJ 2013, 156
GL/EPO A-IV, 1.1,
1.1.1, 1.3.3;
E-IX, 2.4.1
J.18/09, OJ 2011,
480

The divisional application must be filed in the language of the proceedings of the earlier (parent) application. Alternatively, if the earlier application was filed in a language other than an EPO official language, the divisional application may be filed in that language. In this case, a translation into the language of the proceedings of the earlier application must be filed within two months of the filing of the divisional application.

5.19 Further processing and re-establishment of rights

- 5.19.001** If a Euro-PCT application is refused or deemed to be withdrawn following the non-observance of a time limit in the European phase, the applicant may request further processing or, where further processing is not or no longer available, re-establishment of rights (see e.g. points 5.5.009, 5.5.015, 5.6.012, 5.7.014, 5.7.017, 5.8.006, 5.8.008, 5.9.020, 5.9.022, 5.10.011, 5.10.014, 5.11.003, 5.11.009 and 5.13.009). Requests for further processing and for re-establishment of rights are made by performing the omitted act and by paying the applicable fee.

Art. 121, 122 EPC
R. 135, 136 EPC
GL/EPO E-VIII, 2, 3
Art. 2(1)12, first and
third indents, RFees

- 5.19.002** Omitting to take the steps necessary to enter the European phase within the 31-month time limit amounts to non-observance of several time limits. Further processing must be requested for each omitted step. The applicant is informed accordingly in a communication of loss of rights (EPO Form 1205N/EPO Form 1205A). The requests for further processing must be filed and the deficiencies remedied within two months of notification of the communication.

Art. 121 EPC
R. 112, 135, 160
EPC
Art. 2(1)12 RFees
GL/EPO E-VIII, 2

- 5.19.003** For omitted procedural acts (e.g. late filing of a translation), the further processing fee is a flat rate (fee code 122). For late payments, the further processing fee amounts to 50% of the late-paid fee (fee code 123).

Separate further processing fees must be paid for each omitted act comprised in a unitary procedural act.

For example:

- If the applicant pays the filing fee, including any page fee due, after expiry of the 31-month period, the fee for further processing comprises 50% of the late-paid filing fee and 50% of the late-paid page fee (see point 5.7.014).

- If the applicant submits the request for examination and pays the examination fee after expiry of the 31-month period, the fee for further processing comprises the (flat) fee for the late-filed request and 50% of the late-paid examination fee (see point 5.10.012).
- If the applicant fails to file a sequence listing within the time limit set in the communication under Rules 30(3) and 163(3) EPC, and fails to pay the late furnishing fee within that time limit, the fee for further processing comprises the (flat) fee for the late-filed sequence listing and 50% of the late-paid late furnishing fee (see point 5.6.012).

5.19.004 If the time limit for requesting further processing has expired, the applicant may request re-establishment of rights in respect of that time limit. The request is valid only if the corresponding fee is paid. Re-establishment must be requested for each time limit missed. However, for acts considered to be unitary procedural acts (see point 5.19.003) only **one** fee for each unitary act is due.

Art. 122 EPC
R. 136 EPC
GL/EPO E-VIII, 3
J 26/95

For example:

- If the applicant, having failed to pay the filing fee including the page fee on time, then fails to request further processing on time, only one fee for re-establishment of rights is due in respect of the filing and page fees.
- If the applicant, having failed to file the request for examination and pay the examination fee on time, then fails to request further processing on time, only one fee for re-establishment of rights is due in respect of the request for examination and the examination fee.

For an overview of the fees due for further processing and re-establishment of rights, see the table in GL/EPO E-VIII, 3.1.3.

Attention is also drawn to the further requirements for the admissibility and the allowability of requests for re-establishment of rights, which are outlined in detail in GL/EPO E-VIII, 3.

Annex I. Criteria chosen by the EPO as ISA/IPEA on specific points in the ISPE Guidelines

In a number of cases the ISPE Guidelines leave ISAs/IPEAs the choice between alternative guidelines upon which each ISA/IPEA may rely as appropriate.

The options are set out in the appendices to the chapters of the ISPE Guidelines mentioned below. The paragraph number (e.g. point A5.16) refers to the relevant paragraph in the chapter concerned (in this case Chapter 5, point 16).

The EPO as ISA/IPEA has chosen the options listed below.

Appendix to Chapter 4

Point <u>A4.05</u>	References to prior art	Option [1] applies
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Appendix to Chapter 5

Point <u>A5.16</u>	Multiple dependent claims	Option [2] applies
Point <u>A5.20</u>	Interpretation of claims	Option [2] applies
Point <u>A5.21</u>	The EPO applies the first sentence concerning "use" claims	
Point <u>A5.26</u>	Product-by-process claims	Option [1] applies
Point <u>A5.42</u>	Conciseness	Option [2] applies

Appendix to Chapter 9

Point <u>A9.07</u>	Excluded subject matter	Option [2] applies
Point <u>A9.15</u>	Programs for computers	Option [2] applies

Appendix to Chapter 12

Point <u>A12.02</u>	Novelty: effective date	Option [1] applies
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Appendix to Chapter 13

Point <u>A13.08</u>	The EPO applies the problem-solution approach	
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Appendix to Chapter 14

Point <u>A14.01[2]</u>	The EPO applies the criterion of industrial applicability	
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Appendix to Chapter 20

Point <u>A20.21</u>	Disclaimer	Option [2] applies
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Responsible for the content

Directorate 5.2.2

European and International Legal Affairs, PCT

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AGREEMENT

between the European Patent Organisation
and the International Bureau of the World Intellectual Property Organization

in relation to the functioning of the European Patent Office
as an International Searching Authority
and International Preliminary Examining Authority
under the Patent Cooperation Treaty

(as in force from April 1, 2022)*

* Done at Geneva on October 30, 2017, last amended with effect from April 1, 2022, (see *Official Notices (PCT Gazette)* dated January 18, 2018, page 61 *et seq.*, February 15, 2018, page 190, March 8, 2018, page 202, March 28, 2019, page 45, February 27, 2020, pages 26 and 27, April 30, 2020, page 81, and March 10, 2022, page 77).

This consolidated text has been prepared by the International Bureau of WIPO on the basis of the original Agreement, which exists in English, French and German.

Preamble

The European Patent Organisation and the International Bureau of the World Intellectual Property Organization,

Considering that the PCT Assembly, having heard the advice of the PCT Committee for Technical Cooperation, has appointed the European Patent Office as an International Searching and Preliminary Examining Authority under the Patent Cooperation Treaty and approved this Agreement in accordance with Articles 16(3) and 32(3),

Hereby agree as follows:

Article 1 Terms and Expressions

- (1) For the purposes of this Agreement:
 - (a) “Treaty” means the Patent Cooperation Treaty;
 - (b) “Regulations” means the Regulations under the Treaty;
 - (c) “Administrative Instructions” means the Administrative Instructions under the Treaty;
 - (d) “Article” (except where a specific reference is made to an Article of this Agreement) means an Article of the Treaty;
 - (e) “Rule” means a Rule of the Regulations;
 - (f) “Contracting State” means a State party to the Treaty;
 - (g) “the Authority” means the European Patent Office;
 - (h) “the International Bureau” means the International Bureau of the World Intellectual Property Organization.

(2) All other terms and expressions used in this Agreement which are also used in the Treaty, the Regulations or the Administrative Instructions have, for the purposes of this Agreement, the same meaning as in the Treaty, the Regulations and the Administrative Instructions.

Article 2 Basic Obligations

(1) The Authority shall carry out international search and international preliminary examination in accordance with, and perform such other functions of an International Searching Authority and International Preliminary Examining Authority as are provided under, the Treaty, the Regulations, the Administrative Instructions and this Agreement.

(2) In carrying out international search and international preliminary examination, the Authority shall apply and observe all the common rules of international search and of international preliminary examination and, in particular, shall be guided by the PCT International Search and Preliminary Examination Guidelines.

(3) The Authority shall maintain a quality management system in compliance with the requirements set out in the PCT International Search and Preliminary Examination Guidelines.

(4) The Authority and the International Bureau shall, having regard to their respective functions under the Treaty, the Regulations, the Administrative Instructions and this Agreement, render, to the extent considered to be appropriate by both the Authority and the International Bureau, mutual assistance in the performance of their functions thereunder.

Article 3

Competence of Authority

(1) The Authority shall act as International Searching Authority for any international application filed with the receiving Office of, or acting for, any Contracting State specified in Annex A to this Agreement, provided that the receiving Office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international search, is in the language or one of the languages specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant and that any other requirements regarding such application as specified in Annex A to this Agreement have been met.

(2) The Authority shall act as International Preliminary Examining Authority for any international application filed with the receiving Office of, or acting for, any Contracting State specified in Annex A to this Agreement, provided that the receiving Office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international preliminary examination, is in the language or one of the languages specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant and that any other requirements regarding such application as specified in Annex A to this Agreement have been met.

(3) Where an international application is filed with the International Bureau as receiving Office under Rule 19.1(a)(iii), paragraphs (1) and (2) apply as if that application had been filed with a receiving Office which would have been competent under Rule 19.1(a)(i) or (ii), (b) or (c) or Rule 19.2(i).

(4) The Authority shall conduct supplementary international searches in accordance with Rule 45*bis* to the extent decided by it, as set out in Annex B to this Agreement.

Article 4

Subject Matter Not Required to Be Searched or Examined

The Authority shall not be obliged to search, by virtue of Article 17(2)(a)(i), or examine, by virtue of Article 34(4)(a)(i), any international application to the extent that it considers that such application relates to subject matter set forth in Rule 39.1 or 67.1, as the case may be, with the exception of the subject matter specified in Annex C to this Agreement.

Article 5 Fees and Charges

(1) A schedule of all fees of the Authority, and all other charges which the Authority is entitled to make, in relation to its functions as an International Searching Authority and International Preliminary Examining Authority, is set out in Annex D to this Agreement.

(2) The Authority shall, under the conditions and to the extent set out in Annex D to this Agreement:

- (i) refund the whole or part of the search fee paid, or waive or reduce the search fee, where the international search report can be wholly or partly based on the results of an earlier search (Rules 16.3 and 41.1);
- (ii) refund the search fee where the international application is withdrawn or considered withdrawn before the start of the international search.

(3) The Authority shall, under the conditions and to the extent set out in Annex D to this Agreement, refund the whole or part of the preliminary examination fee paid where the demand is considered as if it had not been submitted (Rule 58.3) or where the demand or the international application is withdrawn by the applicant before the start of the international preliminary examination.

Article 6 Classification

For the purposes of Rules 43.3(a) and 70.5(b), the Authority shall indicate the classification of the subject matter according to the International Patent Classification. The Authority may, in addition, in accordance with Rules 43.3 and 70.5, indicate the classification of the subject matter according to any other patent classification specified in Annex E to this Agreement to the extent decided by it as set out in that Annex.

Article 7 Languages of Correspondence Used by the Authority

For the purposes of correspondence, including forms, other than with the International Bureau, the Authority shall use the language or one of the languages indicated, having regard to the language or languages indicated in Annex A and to the language or languages whose use is authorized by the Authority under Rule 92.2(b), in Annex F.

Article 8 International-Type Search

The Authority shall carry out international-type searches to the extent decided by it as set out in Annex G to this Agreement.

Article 9 Entry into Force

This Agreement shall enter into force on January 1, 2018.

Article 10

Duration and Renewability

This Agreement shall remain in force until December 31, 2027. The parties to this Agreement shall, no later than July 2026, start negotiations for its renewal.

Article 11

Amendment

(1) Without prejudice to paragraphs (2) and (3), amendments may, subject to approval by the Assembly of the International Patent Cooperation Union, be made to this Agreement by agreement between the parties hereto; they shall take effect on the date agreed upon by them.

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes to this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; and, notwithstanding paragraph (4), they shall take effect on the date agreed upon by them.

(3) The Authority may, by a notification to the Director General of the World Intellectual Property Organization:

- (i) add to the indications of States and languages contained in Annex A to this Agreement;
- (ii) amend the indications on supplementary international searches contained in Annex B to this Agreement;
- (iii) amend the schedule of fees and charges contained in Annex D to this Agreement;
- (iv) amend the indications on patent classification systems contained in Annex E to this Agreement;
- (v) amend the indications on languages of correspondence contained in Annex F to this Agreement;
- (vi) amend the indications on international-type searches contained in Annex G to this Agreement.

(4) Any amendment notified under paragraph (3) shall take effect on the date specified in the notification, provided that:

- (i) for an amendment to Annex B to the effect that the Authority shall no longer conduct supplementary international searches, that date is at least six months later than the date on which the notification is received by the International Bureau, and
- (ii) for any change in the currency or amount of fees or charges contained in Annex D, for any addition of new fees or charges, and for any change in the conditions for and the extent of refunds or reductions of fees contained in Annex D, that date is at least two months later than the date on which the notification is received by the International Bureau.

Article 12 Termination

- (1) This Agreement shall terminate before December 31, 2027:
 - (i) if the European Patent Organisation gives the Director General of the World Intellectual Property Organization written notice to terminate this Agreement; or
 - (ii) if the Director General of the World Intellectual Property Organization gives the European Patent Organisation written notice to terminate this Agreement.
- (2) The termination of this Agreement under paragraph (1) shall take effect one year after receipt of the notice by the other party, unless a longer period is specified in such notice or unless both parties agree on a shorter period.

Annex A States and Languages

Under Article 3 of the Agreement, the Authority specifies:

- (i) the following States for which it will act:
 - so far as Article 3(1) is concerned:
any Contracting State;
 - so far as Article 3(2) is concerned:
any Contracting State, under the condition that the Authority or another International Searching Authority located in and operating for any State party to the European Patent Convention has prepared the international search report.
Where a receiving Office specifies the International Authority under Articles 3(1) and (2), the International Authority shall become competent for international applications filed at that receiving Office from a date to be agreed by the receiving Office and International Authority and to be notified to the International Bureau.
- (ii) the following languages which it will accept:
English, French, German, and, where the receiving Office is the industrial property Office of the Netherlands, Dutch.

Annex B Supplementary International Search: Documentation Covered; Limitations and Conditions

The Authority conducts supplementary international searches as follows:

- (1) The Authority will accept requests for supplementary international search based on international applications filed in, or translations furnished into, English, French or German.
- (2) The supplementary international search shall cover the documents held in the search collection of the Authority, including, but not limited to, the PCT minimum documentation under Rule 34.

(3) Where applicable, the Authority shall start the supplementary international search in accordance with Rule 45*bis*.5(a) only if a copy of a sequence listing in electronic form complying with the standard provided for in the Administrative Instructions is furnished under Rule 45*bis*.1(c)(ii) and thereafter transmitted to it under Rule 45*bis*.4(e)(iii).

Annex C

Subject Matter Not Excluded from Search or Examination

The subject matter set forth in Rule 39.1 or 67.1 which, under Article 4 of the Agreement, is not excluded from search or examination.

any subject matter which is searched or examined under the patent grant procedure in accordance with the provisions of the European Patent Convention.

Annex D

Fees and Charges

Part I. Schedule of Fees and Charges

Kind of fee or charge	Amount (Euro)
Search fee (Rule 16.1(a))	1,775 ¹
Additional fee (Rules 40.2(a) and 40 <i>bis</i> ²)	1,775 ¹
Supplementary search fee (Rule 45 <i>bis</i> .3(a))	1,775 ¹
Preliminary examination fee (Rule 58.1(b))	1,830 ¹
Additional fee (Rule 68.3(a))	1,830 ¹
Protest fee (Rules 40.2(e) and 68.3(e))	935
Review fee (Rule 45 <i>bis</i> .6(c))	935
Late furnishing fee for sequence listings (Rules 13 <i>ter</i> .1(c) and 13 <i>ter</i> .2)	245

Part II. Conditions for and Extent of Refunds or Reductions of Fees

(1) Any amount paid by mistake, without cause, or in excess of the amount due, for fees indicated in Part I shall be refunded.

(2) Where the international application is withdrawn or considered withdrawn, under Article 14(1), (3) or (4), before the start of the international search, the amount of the search fee paid shall be fully refunded.

(3) Where the Authority benefits from the results of an earlier search already made by the Authority on an application whose priority is claimed for the international application and depending on the extent to which an Authority benefits from that earlier search, the search fee paid shall be refunded to the extent provided for in a communication from the Authority to the International Bureau and published in the Gazette³.

¹ This fee is reduced by 75% under certain conditions (see decision of the EPO's Administrative Council of 12 December 2019 (OJ EPO 2020, A4)). See Part II, paragraph (4), for further details.

² This fee is applied in conjunction with PCT Rule 20.5*bis* (see decision of the EPO's Administrative Council of 27 March 2020 (OJ EPO 2020, A36)).

³ See OJ EPO 2019, A5 and *Official Notices (PCT Gazette)* dated 28 March 2019, page 45.

(4) The amount of the international search fee and the international preliminary examination fee (including any additional fee to be paid), and of the supplementary international search fee, shall be reduced by 75%:

(i) where the applicant or, if there are two or more applicants, each applicant is a natural person who is a national and resident of a State not party to the European Patent Convention and which, on the date of filing of the application or on the date of payment of the supplementary international search fee or of the international preliminary examination fee, is classified as a low-income or lower-middle-income economy by the World Bank. Where the Authority is informed of a change under Rule 92*bis* before the start of the international search, the supplementary international search or, as the case may be, the start of the international preliminary examination, and the change would modify the applicability of the fee reduction, the Authority may request the applicant to pay the full amount of the international search fee, supplementary international search fee or international preliminary examination fee, as well as the full amount of any additional fees that the applicant may be invited to pay; or

(ii) where the applicant, or if there are two or more applicants, each applicant is a natural or legal person who, within the meaning of Rule 18, is a national and resident of a State in which a validation agreement with the European Patent Organisation is in force.

(5) In the cases provided for under Rule 58.3, the amount of the preliminary examination fee paid shall be fully refunded.

(6) Where the international application or the demand is withdrawn before the start of the international preliminary examination, the amount of the preliminary examination fee paid shall be fully refunded.

(7) The Authority shall refund the supplementary search fee if, before it has started the supplementary international search in accordance with Rule 45*bis*.5(a), the supplementary search request is considered not to have been submitted under Rule 45*bis*.5(g).

(8) The Authority shall refund the supplementary search fee if, after receipt of the documents specified in Rule 45*bis*.4(e)(i) to (iv), but before it has started the supplementary international search in accordance with Rule 45*bis*.5(a), it is notified of the withdrawal of the international application or the supplementary search request.

Annex E

Classification

Under Article 6 of the Agreement, the Authority specifies the following classification system in addition to the International Patent Classification: the Cooperative Patent Classification (CPC).

Annex F

Languages of Correspondence

Under Article 7 of the Agreement, the Authority specifies the following languages:

English, French or German, depending on the language in which the international application is filed or translated.

Annex G

International-Type Search

Under Article 8 of the Agreement, the Authority specifies the following extent of international-type searches:

The Authority conducts international-type searches as follows:

An international-type search report (without a written opinion) is drawn up by the Authority on behalf of certain national Offices (e.g. Switzerland, Denmark and Norway) on the basis of the national law of the State for which the Office operates. The amount of the fee to be paid for an international-type search is laid down by the President of the European Patent Office in a decision under Article 3(1) of the Rules relating to Fees published in the Official Journal of the EPO.

An international-type search report accompanied by a written opinion is drawn up by the Authority on behalf of certain national Offices (e.g. Netherlands and Belgium) on the basis of a bilateral working agreement. The amount of the fee to be paid for an international-type search accompanied by a written opinion is set by the national Offices concerned.

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Nur für amtlichen Gebrauch / For official use only / Cadre réservé à l'administration

Tag des Eingangs / Date of receipt / Date de réception

**An das Europäische Patentamt
To the European Patent Office
A l'Office européen des brevets**

Eintritt in die europäische Phase (EPA als Bestimmungsamt oder ausgewähltes Amt)

Entry into the European phase (EPO as designated or elected Office)

Entrée dans la phase européenne (l'OEB agissant en qualité d'office désigné ou élu)

Europäische Anmeldenummer oder, falls nicht bekannt, PCT-Aktenzeichen oder PCT-Veröffentlichungsnummer

European application number or, if not known, PCT application or PCT publication number

Numéro de la demande de brevet européen ou, à défaut, numéro de dépôt PCT ou de publication PCT

Zeichen des Anmelders oder Vertreters

Applicant's or representative's reference

Référence du demandeur ou du mandataire

1.

Anmelder

Applicant

Demandeur



Die Angaben über den (die) Anmelder sind in der internationalen Veröffentlichung enthalten oder vom Internationalen Büro nach der internationalen Veröffentlichung vermerkt worden.

Indications concerning the applicant(s) are contained in the international publication or recorded by the International Bureau after the international publication.

Les indications concernant le(s) demandeur(s) figurent dans la publication internationale ou ont été enregistrées par le Bureau international après la publication internationale.



Änderungen, die das Internationale Büro noch nicht vermerkt hat, sind auf einem Zusatzblatt angegeben.

Changes which have not yet been recorded by the International Bureau are set out on an additional sheet.

Les changements qui n'ont pas encore été enregistrés par le Bureau international sont indiqués sur une feuille additionnelle.



Fehlende Angaben über den oder die Anmelder sind auf einem Zusatzblatt angegeben.

Indications missing for the applicant(s) are given on an additional sheet.

Les indications manquantes concernant un ou plusieurs demandeurs sont mentionnées sur une feuille additionnelle.

Zustellanschrift
(siehe Merkblatt II, 1)

Address for correspondence
(see Notes II, 1)

Adresse pour la correspondance
(voir notice II, 1)

Zeichen des Anmelders / Applicant's reference / Référence du demandeur

2.	Vertreter	Representative	Mandataire
	Name und Geschäftsanschrift (Nur einen Vertreter oder den Namen des Zusammenschlusses angeben, der in das Europäische Patentregister einzutragen ist und an den zugestellt wird)	Name and address of place of business (Name only one representative or association of representatives, to be listed in the Register of European Patents and to whom communications are to be notified)	Nom et adresse professionnelle (N'indiquer qu'un seul mandataire ou le nom du groupement de mandataires qui sera inscrit au Registre européen des brevets et auquel les significations seront faites)
	<div style="border: 1px solid black; height: 100px; margin: 10px 0;"></div> <div> Telefon / Telephone / Téléphone </div> <div> Fax / Téléfax </div>		
	<input type="checkbox"/> Weitere(r) Vertreter auf Zusatzblatt	Additional representative(s) on additional sheet	Autre(s) mandataire(s) sur feuille supplémentaire
3.	Vollmacht	Authorisation	Pouvoir
	<input type="checkbox"/> Vollmacht ist beigelegt.	Authorisation is attached.	Un pouvoir est joint.
	<input type="checkbox"/> Allgemeine Vollmacht ist registriert unter Nr.:	General authorisation is registered under No.:	Un pouvoir général est enregistré sous le n° :
	<div style="border: 1px solid black; height: 20px; margin: 10px 0;"></div>		
	<input type="checkbox"/> Allgemeine Vollmacht ist eingereicht, aber noch nicht registriert.	A general authorisation has been filed, but not yet registered.	Un pouvoir général a été déposé, mais n'est pas encore enregistré.
	<input type="checkbox"/> Die beim EPA als PCT-Anmeldeamt eingereichte Vollmacht schließt ausdrücklich die europäische Phase ein.	The authorisation filed with the EPO as PCT receiving Office expressly includes the European phase.	Le pouvoir déposé à l'OEB agissant en qualité d'office récepteur au titre du PCT inclut expressément la phase européenne.
4.	Prüfungsantrag	Request for examination	Requête en examen
4.1	<input checked="" type="checkbox"/> Hiermit wird die Prüfung der Anmeldung gemäß Artikel 94 EPÜ beantragt. Die Prüfungsgebühr wird (wurde) entrichtet.	Examination of the application under Article 94 EPC is hereby requested. The examination fee is being (has been, will be) paid.	Il est demandé par la présente que soit examinée la demande de brevet conformément à l'article 94 CBE. Il est (a été, sera) procédé au paiement de la taxe d'examen.
	<u>Prüfungsantrag</u> in einer zugelassenen Nichtamtssprache	<u>Request for examination</u> in an admissible non-EPO language	<u>Requête en examen</u> dans une langue non officielle autorisée
	<div style="border: 1px solid black; height: 20px; margin: 10px 0;"></div>		
	<input type="checkbox"/> Der/Jeder Anmelder erklärt hiermit, eine Einheit oder eine natürliche Person nach Regel 6 (4) EPÜ zu sein.	The/Each applicant hereby declares that he is an entity or a natural person under Rule 6(4) EPC.	Le/Chaque demandeur déclare par la présente être une entité ou une personne physique au sens de la règle 6(4) CBE.
5.	Abschriften	Copies	Copies
	<input type="checkbox"/> Zusätzliche Abschriften der im ergänzenden europäischen Recherchenbericht angeführten Schriftstücke werden beantragt.	Additional copies of the documents cited in the supplementary European search report are requested.	Prière de fournir des copies supplémentaires des documents cités dans le rapport complémentaire de recherche européenne.
	Anzahl der zusätzlichen Sätze von Abschriften	Number of additional sets of copies	Nombre de jeux supplémentaires de copies
	<div style="border: 1px solid black; height: 20px; margin: 10px 0;"></div>		

6.	Für das Verfahren vor dem EPA bestimmte Unterlagen	Documents intended for proceedings before the EPO	Pièces destinées à la procédure devant l'OEB
6.1	Dem Verfahren vor dem EPA als Bestimmungsamt (PCT I) sind folgende Unterlagen zugrunde zu legen:	Proceedings before the EPO as designated Office (PCT I) are to be based on the following documents:	La procédure devant l'OEB agissant en qualité d' office désigné (PCT I) doit se fonder sur les pièces suivantes :
	<input type="checkbox"/> die vom Internationalen Büro veröffentlichten Anmeldungsunterlagen ; falls die Veröffentlichung einen geänderten Anspruchssatz gemäss Artikel 19 PCT enthält, ersetzt dieser die ursprünglich eingereichten Ansprüche	the application documents published by the International Bureau; where the publication includes a set of claims amended under Article 19 PCT, the latter replaces the originally filed claims	les pièces de la demande publiées par le Bureau international; lorsque la publication contient des revendications modifiées conformément à l'article 19 PCT, ces dernières remplacent les revendications telles que déposées initialement
	<input type="checkbox"/> soweit sie nicht ersetzt werden durch die beigefügten Änderungen .	unless replaced by the amendments enclosed.	dans la mesure où elles ne sont pas remplacées par les modifications jointes.
	<input type="checkbox"/> Stellungnahmen zu dem vom EPA als Internationaler Recherchenbehörde erstellten schriftlichen Bescheid und/oder Bemerkungen bzw. Stellungnahmen zu den Erläuterungen in dem vom EPA als mit der ergänzenden internationalen Recherche beauftragten Behörde erstellten ergänzenden internationalen Recherchenbericht (Regel 45bis.7 e) PCT)	Comments on the written opinion established by the EPO as the International Searching Authority and/or observations or, where applicable, on the explanations given in the Supplementary International Search Report established by the EPO as the Supplementary International Searching Authority (Rule 45bis.7(e) PCT)	Commentaires sur l'opinion écrite établie par l'OEB agissant en qualité d'administration chargée de la recherche internationale et/ou observations, ou, le cas échéant, commentaires sur les explications figurant dans le rapport de recherche internationale supplémentaire établi par l'OEB agissant en qualité d'administration chargée de la recherche internationale supplémentaire (règle 45bis.7e) PCT)
	<i>Soweit erforderlich, sind weitere Angaben auf einem Zusatzblatt einzureichen.</i>	<i>Where necessary, further details should be submitted on an additional sheet.</i>	<i>Le cas échéant, des informations complémentaires doivent être fournies sur une feuille additionnelle.</i>
6.2	<input type="checkbox"/> Dem Verfahren vor dem EPA als ausgewähltem Amt (PCT II) sind folgende Unterlagen zugrunde zu legen: die dem internationalen vorläufigen Prüfungsbericht zugrunde gelegten Unterlagen , einschließlich etwaiger Anlagen	Proceedings before the EPO as elected Office (PCT II) are to be based on the following documents: the documents on which the international preliminary examination report is based , including any annexes	La procédure devant l'OEB agissant en qualité d' office élu (PCT II) doit se fonder sur les pièces suivantes : les pièces sur lesquelles se fonde le rapport d'examen préliminaire international , y compris ses annexes éventuelles
	<input type="checkbox"/> soweit sie nicht ersetzt werden durch die beigefügten Änderungen .	unless replaced by the amendments enclosed.	dans la mesure où elles ne sont pas remplacées par les modifications jointes.
	<input type="checkbox"/> Stellungnahmen zu dem vom EPA als mit der internationalen vorläufigen Prüfung beauftragter Behörde erstellten internationalen vorläufigen Prüfungsbericht und/oder Bemerkungen sind beigefügt.	Comments on the international preliminary examination report established by the EPO as the International Preliminary Examining Authority and/or observations are enclosed.	Les commentaires sur le rapport d'examen préliminaire international établi par l'OEB agissant en qualité d'administration chargée de l'examen préliminaire international et/ou les observations sont joints.
	<i>Soweit erforderlich, sind weitere Angaben auf einem Zusatzblatt einzureichen.</i>	<i>Where necessary, further details should be submitted on an additional sheet.</i>	<i>Le cas échéant, des informations complémentaires doivent être fournies sur une feuille additionnelle.</i>
	<input checked="" type="checkbox"/> Sind dem EPA als mit der internationalen vorläufigen Prüfung beauftragter Behörde Versuchsberichte zugegangen, dürfen diese dem Verfahren vor dem EPA zugrunde gelegt werden.	If the EPO as International Preliminary Examining Authority has received test reports , these may be used as the basis of proceedings before the EPO.	Si l'OEB, agissant en qualité d'administration chargée de l'examen préliminaire international, a reçu des rapports d'essais , ceux-ci peuvent être utilisés comme base dans la procédure devant l'OEB.
	Anmerkung zu den Feldern 6.1 und 6.2: Bei Anmeldungen, die mehr als 35 Seiten umfassen, sollen in der Tabelle auf Seite 8 Angaben betreffend die Berechnung der Zusatzgebühren gemacht werden.	Note on sections 6.1 and 6.2: For applications comprising more than 35 pages, indications regarding the calculation of the additional fee should be given in the table on page 8.	Remarque concernant les rubriques 6.1 et 6.2 : pour les demandes comportant plus de 35 pages, des indications relatives au calcul de la taxe additionnelle doivent figurer dans la tableau de la page 8.
6.3	<input type="checkbox"/> Eine Kopie der Recherchenergebnisse der Behörde, bei der die frühere(n) Anmeldung(en), deren Priorität beansprucht wird, eingereicht wurde(n), ist beigefügt (Regel 141 (1) EPÜ).	For each of the previous applications whose priority is claimed a copy is attached of the search results produced by the authority with which the application was filed (Rule 141(1) EPC).	Il est joint une copie des résultats de toute recherche effectuée par l'administration auprès de laquelle la (les) demande(s) antérieure(s) dont la priorité est revendiquée a (ont) été déposée(s) (règle 141(1) CBE).

7.	Übersetzungen	Translations	Traductions
	Beigefügt sind die nachfolgend angekreuzten Übersetzungen in einer der Amtssprachen des EPA (Deutsch, Englisch, Französisch): <i>a) Im Verfahren vor dem EPA als Bestimmungsamt oder ausgewähltem Amt (PCT I + II):</i>	Translations in one of the official languages of the EPO (English, French, German) are enclosed as crossed below: <i>(a) In proceedings before the EPO as designated or elected Office (PCT I + II):</i>	Vous trouverez, ci-joint, les traductions cochées ci-après dans l'une des langues officielles de l'OEB (allemand, anglais, français) : <i>a) Dans la procédure devant l'OEB agissant en qualité d'office désigné ou élu (PCT I + II) :</i>
7.1	<input type="checkbox"/> Übersetzung der internationalen Anmeldung in der ursprünglich eingereichten Fassung (Beschreibung, Ansprüche, etwaige Textbestandteile in den Zeichnungen), der veröffentlichten Zusammenfassung und etwaiger Angaben über biologisches Material nach Regel 13bis.3 und 13bis.4 PCT	Translation of the international application (description, claims, any text in the drawings) as originally filed , of the abstract as published and of any indication under Rule 13bis.3 and 13bis.4 PCT regarding biological material	Traduction de la demande internationale telle que déposée initialement (description, revendications, textes figurant éventuellement dans les dessins), de l'abrégé publié et de toutes indications visées aux règles 13bis.3 et 13bis.4 PCT concernant le matériel biologique
7.2	<input type="checkbox"/> Übersetzung der prioritätsbegründenden Anmeldung(en) (nur nach Aufforderung durch das EPA, Regel 53 (3) EPÜ)	Translation of the priority application(s) (to be filed only at the EPO's request, Rule 53(3) EPC)	Traduction de la (des) demande(s) dont la priorité est revendiquée (à produire seulement sur invitation de l'OEB, règle 53(3) CBE)
7.3	<input type="checkbox"/> Es wird hiermit erklärt, dass die internationale Anmeldung in ihrer ursprünglich eingereichten Fassung eine vollständige Übersetzung der früheren Anmeldung ist (Regel 53 (3) EPÜ). <i>b) Zusätzlich im Verfahren vor dem EPA als Bestimmungsamt (PCT I):</i>	It is hereby declared that the international application as originally filed is a complete translation of the previous application (Rule 53(3) EPC). <i>(b) In addition, in proceedings before the EPO as designated Office (PCT I):</i>	Il est déclaré par la présente que la demande internationale telle que déposée initialement est une traduction intégrale de la demande antérieure (règle 53(3) CBE). <i>b) De plus, dans la procédure devant l'OEB agissant en qualité d'office désigné (PCT I) :</i>
7.4	<input type="checkbox"/> Übersetzung der nach Artikel 19 PCT geänderten Ansprüche nebst Erklärung, falls diese dem Verfahren vor dem EPA zugrunde gelegt werden sollen (siehe Feld 6). <i>c) Zusätzlich im Verfahren vor dem EPA als ausgewähltem Amt (PCT II):</i>	Translation of amended claims and any statement under Article 19 PCT, if the claims as amended are to form the basis for the proceedings before the EPO (see Section 6). <i>(c) In addition, in proceedings before the EPO as elected Office (PCT II):</i>	Traduction des revendications modifiées et de la déclaration faite conformément à l'article 19 PCT, si la procédure devant l'OEB doit être fondée sur les revendications modifiées (voir la rubrique 6). <i>c) De plus, dans la procédure devant l'OEB agissant en qualité d'office élu (PCT II) :</i>
7.5	<input type="checkbox"/> Übersetzung der Anlagen zum internationalen vorläufigen Prüfungsbericht	Translation of any annexes to the international preliminary examination report	Traduction des annexes du rapport d'examen préliminaire international
8.	Biologisches Material	Biological material	Matière biologique
	<input type="checkbox"/> Die Erfindung verwendet und/oder bezieht sich auf biologisches Material, das nach Regel 13bis PCT und Regel 31 EPÜ hinterlegt worden ist.	The invention uses and/or relates to biological material deposited under Rule 13bis PCT and Rule 31 EPC.	L'invention utilise et/ou concerne de la matière biologique déposée conformément à la règle 13bis PCT et à la règle 31 CBE.
	Bezugszeichen <input type="text"/>	Identification reference <input type="text"/>	Référence d'identification <input type="text"/>
	Hinterlegungsstelle (Name und Adresse) <input type="text"/>	Depository institution (Name and address) <input type="text"/>	Autorité de dépôt (Nom et adresse) <input type="text"/>
	Eingangsnummer <input type="text"/>	Accession number <input type="text"/>	Numéro d'ordre <input type="text"/>

<input type="checkbox"/>	Die Angaben nach Regel 31 (1) c) EPÜ (falls noch nicht bekannt, die Hinterlegungsstelle und das (die) vom Hinterleger zugeteilte(n) Bezugszeichen [Nummer, Symbole usw.]) sind in der internationalen Veröffentlichung oder in der gemäß Feld 7 eingereichten Übersetzung enthalten auf Seite(n)/Zeile(n):	The particulars referred to in Rule 31(1) (c) EPC (if not yet known, the depository institution and the identification reference(s) [number, symbols, etc.] of the depositor) are given in the international publication or in the translation submitted under Section 7 on page(s)/line(s):	Les indications visées à la règle 31(1)c) CBE (si elles ne sont pas encore connues, l'autorité de dépôt et la (les) référence(s) d'identification [numéro ou symboles etc.] du déposant) figurent dans la publication internationale ou dans la traduction produite conformément à la rubrique 7 à la/aux page(s)/ligne(s) :
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Die **Empfangsbescheinigung(en)** der Hinterlegungsstelle

The **receipt(s) of deposit** issued by the depository institution

Le(s) **récépissé(s) de dépôt** délivré(s) par l'autorité de dépôt

<input type="checkbox"/>	ist (sind) beigelegt.	is (are) enclosed.	est (sont) joint(s).
<input type="checkbox"/>	wird (werden) nachgereicht.	will be filed later.	sera (seront) produit(s) ultérieurement.
<input type="checkbox"/>	Verzicht auf die Verpflichtung des Antragstellers nach Regel 33 (2) EPÜ auf gesondertem Schriftstück	Waiver of the right to an undertaking from the requester pursuant to Rule 33(2) EPC attached	Renonciation, sur document distinct, à l'engagement du requérant au titre de la règle 33(2) CBE

9. Nucleotid- und Aminosäuresequenzen

Nucleotide and amino acid sequences

Séquences de nucléotides et d'acides aminés

9.1	<input type="checkbox"/> Das Sequenzprotokoll wurde gemäß Regel 5.2 (a) PCT eingereicht oder gemäß Regel 13ter.1 (a) PCT beim EPA als ISA eingereicht oder dem EPA auf andere Weise in einem Format zugänglich gemacht, das dem am internationalen Anmeldetag geltenden WIPO-Standard entspricht.	The sequence listing was filed under Rule 5.2(a) PCT, or furnished to the EPO as ISA under Rule 13ter.1(a) PCT, or is otherwise available to the EPO, in a format complying with the WIPO Standard applicable at the international date of filing.	Le listage de séquences a été déposé au titre de la règle 5.2(a) PCT, fourni à l'OEB agissant en tant qu'ISA au titre de la règle 13ter.1(a) PCT, ou mis à la disposition de l'OEB par un autre moyen, dans un format conforme à la norme de l'OMPI applicable à la date du dépôt international.
9.2	<input type="checkbox"/> Das Sequenzprotokoll wird anliegend in einem Format nachgereicht, das dem am internationalen Anmeldetag geltenden WIPO-Standard entspricht.	The sequence listing is furnished herewith in a format complying with the WIPO Standard applicable at the international date of filing.	Le listage de séquences dans un format conforme à la norme de l'OMPI applicable à la date du dépôt international est fourni ci-joint
	<input type="checkbox"/> Das Sequenzprotokoll geht nicht über den Inhalt der Anmeldung in der ursprünglich eingereichten Form hinaus.	The sequence listing does not include matter which goes beyond the application as filed.	Le listage des séquences ne s'étend pas au-delà du contenu de la demande telle qu'elle a été déposée.

10. Benennung von Vertragsstaaten

Designation of contracting states

Désignation d'Etats contractants

Alle Vertragsstaaten, die dem EPÜ bei **Einreichung der internationalen Patentanmeldung** angehören, gelten als benannt (siehe Artikel 79 (1) EPÜ), soweit sie in der internationalen Anmeldung bestimmt sind.

All the contracting states party to the EPC **at the time of filing of the international patent application** and designated in the international application are deemed to be designated (see Article 79(1) EPC).

Tous les Etats contractants qui sont parties à la CBE **lors du dépôt de la demande de brevet internationale** et sont désignés dans la demande internationale sont réputés désignés (voir article 79(1) CBE).

11. Erstreckung/Validierung

Extension/Validation

Extension/Validation

Diese Anmeldung gilt als Antrag, die europäische Patentanmeldung und das darauf erteilte europäische Patent auf alle in der internationalen Anmeldung bestimmten Nichtvertragsstaaten des EPÜ zu erstrecken, mit denen am Tag der Einreichung der internationalen Anmeldung Erstreckungs- oder Validierungsabkommen in Kraft waren. Der Antrag gilt jedoch als zurückgenommen, wenn die Erstreckungs- bzw. die Validierungsgebühr nicht fristgerecht entrichtet wird.

This application is deemed to be a request to extend the effects of the European patent application and the European patent granted in respect of it to all non-contracting states to the EPC designated in the international application with which extension or validation agreements were in force on the date on which the application was filed. However, the request is deemed withdrawn if the extension fee or validation fee, whichever is applicable, is not paid within the prescribed time limit.

La présente demande est réputée constituer une requête en extension des effets de la demande de brevet européen et du brevet européen délivré sur la base de cette demande à tous les Etats non parties à la CBE qui sont désignés dans la demande internationale et avec lesquels des accords d'extension ou de validation étaient en vigueur à la date du dépôt de la demande. Cette requête est toutefois réputée retirée si la taxe d'extension ou, le cas échéant, la taxe de validation n'est pas acquittée en temps utile.

Zeichen des Anmelders / Applicant's reference / Référence du demandeur

11.1	<p>Es ist beabsichtigt, die Erstreckungsgebühr(en) für folgende Staaten zu entrichten:</p> <p>Hinweis: Im automatischen Abbuchungsverfahren werden nur für die hier angekreuzten Staaten Erstreckungsgebühren abgebucht, sofern dem EPA nicht vor Ablauf der Zahlungsfrist ein anderslautender Auftrag zugeht.</p>	<p>It is intended to pay the extension fee(s) for the following state(s):</p> <p>Note: Under the automatic debiting procedure, extension fees will be debited only for states indicated here, unless the EPO is instructed otherwise before expiry of the period for payment.</p>	<p>Il est envisagé de payer la(les) taxe(s) d'extension pour les Etats suivants :</p> <p>Veillez noter que dans le cadre de la procédure de prélèvement automatique des taxes d'extension, le compte est débité du montant dû seulement pour les Etats cochés ici, sauf instruction contraire reçue avant l'expiration du délai de paiement.</p>			
	<input type="checkbox"/> BA Bosnien und Herzegowina	Bosnia and Herzegovina	Bosnie-Herzégovine			
	<input type="checkbox"/> <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 20px;"></td> <td style="width: 20px;"></td> <td></td> </tr> </table>					
	<input type="checkbox"/> <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 20px;"></td> <td style="width: 20px;"></td> <td></td> </tr> </table>					
	<p><i>(Platz für in der internationalen Anmeldung bestimmte Staaten, mit denen Erstreckungsabkommen am Anmeldetag der internationalen Anmeldung in Kraft waren)</i></p>	<p><i>(Space for states which were designated in the international application and with which extension agreements existed on the date of filing of the international application)</i></p>	<p><i>(Espace prévu pour des Etats désignés dans la demande internationale avec lesquels des accords d'extension existaient à la date de dépôt de la demande internationale)</i></p>			
11.2	<p>Es ist beabsichtigt, die Validierungsgebühr(en) für folgende Staaten zu entrichten:</p> <p>Hinweis: Im automatischen Abbuchungsverfahren werden nur für die hier angekreuzten Staaten Validierungsgebühren abgebucht, sofern dem EPA nicht vor Ablauf der Zahlungsfrist ein anderslautender Auftrag zugeht.</p>	<p>It is intended to pay the validation fee(s) for the following state(s):</p> <p>Note: Under the automatic debiting procedure, validation fees will be debited only for states indicated here, unless the EPO is instructed otherwise before expiry of the period for payment.</p>	<p>Il est envisagé de payer la(les) taxe(s) de validation pour les Etats suivants :</p> <p>Veillez noter que dans le cadre de la procédure de prélèvement automatique des taxes de validation, le compte est débité du montant dû seulement pour les Etats cochés ici, sauf instruction contraire reçue avant l'expiration du délai de paiement.</p>			
	<input type="checkbox"/> KH Kambodscha ➔ Beachten Sie bitte, dass derzeit Arzneimittel in Kambodscha bis 2033 vom Patentschutz ausgenommen sind: Siehe ABI EPA 2018, A16	Cambodia ➔ Note that pharmaceutical products are currently excluded from patent protection in Cambodia until 2033: see OJ EPO 2018, A16	Cambodge ➔ Veuillez noter que les produits pharmaceutiques sont actuellement exclus de la protection par brevet au Cambodge jusqu'en 2033, cf. JO OEB 2018, A16			
	<input type="checkbox"/> MA Marokko	Morocco	Maroc			
	<input type="checkbox"/> MD Republik Moldau	Republic of Moldova	République de Moldavie			
	<input type="checkbox"/> TN Tunesien	Tunisia	Tunisie			
	<input type="checkbox"/> <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 20px;"></td> <td style="width: 20px;"></td> <td></td> </tr> </table>					
	<p><i>(Platz für in der internationalen Anmeldung bestimmte Staaten, mit denen Validierungsabkommen nach Drucklegung dieses Formblatts in Kraft treten)</i></p>	<p><i>(Space for states which were designated in the international application and with which validation agreements enter into force after this form has been printed)</i></p>	<p><i>(Espace prévu pour des Etats désignés dans la demande internationale avec lesquels des accords de validation entreront en vigueur après l'impression du présent formulaire)</i></p>			
12.	Beschleunigung des Verfahrens	Acceleration of procedure	Accélération de la procédure			
12.1	Vorzeitige Bearbeitung	Early processing	Traitement anticipé			
	<input type="checkbox"/> Hiermit wird die vorzeitige Bearbeitung der Anmeldung gemäß Artikel 23 (2) / 40 (2) PCT beantragt („vorzeitiger Eintritt in die europäische Phase“). ➔ Bitte beachten Sie die Erfordernisse, die für einen wirksamen Antrag auf vorzeitige Bearbeitung erfüllt werden müssen, sowie dessen rechtliche Konsequenzen (s. „Merkblatt zum Formblatt EPA 1200“).	Early processing of the application pursuant to Article 23(2) / 40(2) PCT is hereby requested ("early entry into the European phase"). ➔ Please take note of the further requirements for the request to be effective and the legal consequences (see "Notes on EPO Form 1200").	Par la présente, le traitement anticipé de la demande selon les articles 23(2)/40(2) PCT est demandé (« entrée anticipée dans la phase européenne »). ➔ Prière de noter les conditions requises à remplir pour qu'une requête en traitement anticipé soit valable, ainsi que les conséquences juridiques (voir la « Notice concernant le formulaire OEB 1200 »).			
	Zeichen des Anmelders / Applicant's reference / Référence du demandeur	<table border="1" style="width: 100%; height: 20px;"> <tr> <td></td> </tr> </table>				

	Verzichtserklärungen	Waivers	Renonciations
12.2	<input type="checkbox"/> Der Anmelder verzichtet auf die Mitteilung nach Regel 161 (1) oder (2) und 162 EPÜ. <input type="checkbox"/> Der Anmelder verzichtet auf die Aufforderung nach Regel 70 (2) EPÜ, zu erklären, ob die Anmeldung aufrechterhalten wird.	<p>The applicant waives his right to the communication under Rules 161(1) or (2) and 162 EPC.</p> <p>The applicant waives his right to be asked under Rule 70(2) EPC whether he wishes to proceed further with the application.</p>	<p>Le demandeur renonce au droit de recevoir la notification émise en vertu des règles 161(1) ou (2) et 162 CBE.</p> <p>Le demandeur renonce à être invité, conformément à la règle 70(2) CBE, à déclarer s'il souhaite maintenir sa demande.</p>
13.	Zahlungen Bezüglich der Gebührenentrichtung, insbesondere über das laufende Konto, wird auf Abschnitt 13 des Merkblatts zum Formblatt für den Eintritt in die europäische Phase (EPA als Bestimmungsamt oder ausgewähltes Amt) (Formblatt EPA/EPO/ OEB 1200) verwiesen.	Payment With regard to the payment of fees, in particular via deposit account, reference is made to Section 13 of the Notes on Form EPA/EPO/OEB 1200 for entry into the European phase (EPO as designated or elected Office).	Paiement En ce qui concerne le paiement des taxes, en particulier via un compte courant, il est fait référence à la rubrique 13 de la notice concernant le formulaire EPA/EPO/ OEB 1200 relatif à l'entrée dans la phase européenne (OEB agissant en qualité d'office désigné ou élu).
14.	gestrichen	deleted	supprimé
15.	Unterschrift(en) des (der) Anmelders(s) oder Vertreter <div style="border: 1px solid black; height: 50px; width: 100%;"></div> <p>Name(n) des (der) Unterzeichneten bitte in Druckschrift wiederholen und bei juristischen Personen auch die Stellung des (der) Unterzeichneten innerhalb der Gesellschaft angeben.</p> <p>Für Angestellte (Art. 133 (3) EPÜ) mit allgemeiner Vollmacht Nr.:</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	Signature(s) of applicant(s) or representative <div style="border: 1px solid black; height: 50px; width: 100%;"></div> <p>Under signature please print name and, in the case of legal persons, position within the company.</p> <p>For employees (Art. 133(3) EPC) with general authorisation No.:</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>	Signature(s) du (des) demandeur(s) ou du mandataire <div style="border: 1px solid black; height: 50px; width: 100%;"></div> <p>Prière d'indiquer en caractères d'imprimerie le ou les noms des signataires ainsi que, s'il s'agit d'une personne morale, la position occupée au sein de celle-ci par le ou les signataires.</p> <p>Pour les employés (art. 133(3) CBE) disposant d'un pouvoir général n° :</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
	Ort / Datum	Place / Date	Lieu / Date

**Tabelle zu Feld 6
des Formblatts 1200.3**

**Table for section 6
of Form 1200.3**

**Tableau afférent
à la rubrique 6
du formulaire 1200.3**

**Der Berechnung der Zusatzgebühr zugrunde zu legende Unterlagen (Art. 2(1), Nr. 1a, GebO):¹ /
Documents on which the calculation of the additional fee is based
(Art. 2(1), item 1a, RFees):¹ / Pièces fondant le calcul de la taxe
additionnelle (art. 2(1), point 1bis RRT) :¹**

Seite(n) von ... bis ...²
Page(s) from ... to ...²
Page(s) ... à ...²

Anzahl der Seiten³
Number of pages³
Nombre de pages³

Veröffentlichte Fassung der internationalen Anmeldung / International application as published / Demande internationale telle que publiée	Beschreibung / description / description		
	Ansprüche / claims / revendications		
	Zeichnungen / drawings / dessins		
	Zusammenfassung / abstract / abrégé		1
Geänderte Ansprüche nach Art. 19 PCT (veröffentlicht mit der internationalen Anmeldung oder gesondert veröffentlicht) / Amended claims under Art. 19 PCT (published with the international application or published separately) / Revendications modifiées en vertu de l'art. 19 PCT (telles que publiées avec la demande internationale ou telles que publiées séparément)			
Änderungen nach Art. 34 PCT / Amendments under Art. 34 PCT / Modifications en vertu de l'art. 34 PCT	Beschreibung / description / description		
	Ansprüche / claims / revendications		
	Zeichnungen / drawings / dessins		
Beim Eintritt in die europäische Phase eingereichte Änderungen / Amendments filed on entry into European phase / Modifications présentées lors de l'entrée dans la phase européenne	Beschreibung / description / description		
	Ansprüche / claims / revendications		
	Zeichnungen / drawings / dessins		
Anzahl der Seiten insgesamt / Total number of pages / Nombre total de pages			
Gebührenfreie Seiten (Art. 2(1) Nr. 1a GebO) / Fee-exempt pages (Art. 2(1), item 1a, RFees) / Pages exemptes de taxes (art. 2(1), point 1bis RRT)			- 35
Anzahl der gebührenpflichtigen Seiten / Number of pages to be paid for / Nombre de pages soumises au paiement de la taxe			
Zu entrichtender Gesamtbetrag ⁴ Total amount payable Montant total exigible en euros		EUR	

Fußnoten

- 1 Zu Fällen, in denen die internationale Anmeldung nicht in einer Amtssprache des EPA veröffentlicht wurde, siehe die Mitteilung zur Ergänzung der Mitteilung des Europäischen Patentamts vom 26. Januar 2009 über die Gebührenstruktur 2009 (ABI. EPA 2009, 338).
- 2 In dieser Spalte sind nur die Seiten anzugeben, die der Berechnung der Zusatzgebühr (Art. 2(1), Nr. 1a GebO) zugrunde zu legen sind. Verbleibende Seiten/Teile der veröffentlichten Fassung der Anmeldung und/oder der gemäß Artikel 19 PCT und/oder Artikel 34 PCT geänderten Anmeldung, die zu ersetzen sind, sind nicht in dieser Spalte anzugeben.
- 3 In dieser Spalte ist nur die Zahl der Seiten anzugeben, die der Berechnung der Zusatzgebühr (Art. 2, Nr. 1a GebO) zugrunde zu legen sind.
- 4 Die aktuelle Höhe der Zusatzgebühr entnehmen Sie bitte dem interaktiven Gebührenverzeichnis, das auf der Website des EPA unter <https://my.epoline.org/portal/classic/epoline.Scheduleoffees> zu konsultieren.

Footnotes

- For cases where the international application has not been published in an official language of the EPO, see the Notice supplementing the Notice from the European Patent Office dated 26 January 2009 concerning the 2009 fee structure (OJ EPO 2009, 338).
- Only those pages to be taken into account for the calculation of the additional fee (Art. 2(1), item 1a, RFees) shall be indicated in this column. Any remaining pages/parts of the application as published and/or amended under Article 19 PCT and/or Article 34 PCT which are to be replaced shall not be indicated in this column.
- Only the number of pages to be taken into account for the calculation of the additional fee (Art. 2, item 1a, RFees) shall be indicated in this column.
- For the current amount of the additional fee, please consult the interactive schedule of fees published on the EPO website at <https://my.epoline.org/portal/classic/epoline.Scheduleoffees>.

Notes de bas de page

- Pour les cas où à la demande internationale n'a pas été publiée dans une langue officielle de l'OEB, cf. Communiqué complétant le communiqué de l'Office européen des brevets, en date du 26 janvier 2009, relatif à la structure des taxes 2009 (JO OEB 2009, 338).
- Il convient de n'indiquer dans cette colonne que les pages devant être prises en considération pour le calcul de la taxe additionnelle (art. 2(1), point 1bis RRT). Si la demande telle que publiée et/ou modifiée au titre de l'article 19 PCT et/ou de l'article 34 PCT contient d'autres pages/parties qui doivent être remplacées, prière de ne pas mentionner les pages/parties en question dans cette colonne.
- Il convient de n'indiquer dans cette colonne que le nombre de pages devant être prises en considération pour le calcul de la taxe additionnelle (art. 2, point 1bis RRT).
- Pour connaître le montant actuel de la taxe additionnelle, veuillez consulter le barème des taxes interactif publié sur le site Internet de l'OEB à l'adresse <https://my.epoline.org/portal/classic/epoline.Scheduleoffees>.

Notes on EPA/EPO/OEB Form 1200 for entry into the European phase (EPO as designated or elected Office)

I. General instructions

These notes explain how to complete EPA/EPO/OEB Form 1200. To file international applications under the Patent Cooperation Treaty (PCT) Form PCT/RO/101 should be used. The appropriate form to request the grant of a European patent is EPA/EPO/OEB Form 1001.

The requirements for entry into the European phase are laid down in the European Patent Convention (EPC) and its Implementing Regulations. Further information on entry into the European phase can be obtained from the Euro-PCT Guide: PCT procedure at the EPO, in particular Chapter 5: Euro-PCT procedure before the EPO as a designated (PCT Chapter I) or elected (PCT Chapter II) Office.

Forms and brochures

Forms, brochures, schedules of fees and legal texts can be downloaded from the EPO's website at epo.org.

Accelerated prosecution

For those seeking faster search or examination for their applications, the "PACE" programme for accelerated prosecution of European patent applications ([OJ EPO 2015, A93](#)) offers effective options for shortening the processing time.

However, PACE requests filed before the end of the international phase will not be effective unless accompanied by an express request for early processing under Article 23(2) or 40(2) PCT (see point 12.1).

For other ways to expedite the European grant procedure, see the notice from the EPO dated 30 November 2015 ([OJ EPO 2015, A94](#)) and point 12.

Entry into the European phase – Form 1200

Under Rule 159(1) EPC, on entry into the European phase before the EPO as designated or elected Office applicants must perform the acts specified in Rules 159(1)(a) to (h) and 162(1) EPC within 31 months of the filing date or, if priority has been claimed, the (earliest) priority date.

Use of Form 1200 is recommended. The form should be typewritten or printed (Rule 50(2) EPC) to ensure that it is machine-readable.

If there is not enough space for the required information, an additional sheet should be filed, indicating the number and heading (e.g. "2 - Additional representative(s)"; "6 - Documents intended for proceedings before the EPO") of each section continued in this way.

Applicants should indicate their internal reference in the box above section 1 and in the corresponding box at the bottom of each page.

Filing of documents

Form 1200 and attachments must be filed direct with the EPO.

(a) Online

Form 1200, attached translations and amendments to the application documents may be filed in electronic form (OJ EPO 2021, A20), i.e. via EPO Online Filing, via the EPO case management system (CMS, also referred to as new online filing), via Online Filing 2.0 or via the EPO Web-Form Filing service. For more details go to epo.org. The online filing fee is less than the fee for filing in person, by post or by fax.

(b) By fax

The above documents may also be filed by fax. Confirmation on paper is required only if the EPO specifically requests it (see Special edition No. 3, OJ EPO 2007, A.3).

(c) By post or in person

Form 1200 need only be filed in one copy. The same applies to attached translations and amendments to the application documents. Special rules apply to sequence listings (see II.9).

II. Filling in the form

The numbering below corresponds to the sections of the form.

1. Applicant

If on entry into the European phase the address, nationality, or country of residence or of place of business is missing for any applicant (as may

occur under Rule 26.2bis(b) PCT), this information must be filed on a separate sheet.

An address for correspondence may be given only by applicants who are not obliged to appoint a professional representative authorised to act before the EPO (Article 133 EPC) and have not appointed one. It must be the applicant's own address, and in an EPC contracting state. Addresses for correspondence accepted for proceedings in the international phase but which do not fulfil those conditions will not be accepted in proceedings before the EPO in the European phase (see OJ EPO 2014, A99).

2. Representative (Articles 133 and 134 EPC)

Applicants not having their residence or principal place of business in an EPC contracting state must be represented by a professional representative and act through him in all proceedings established by the EPC (Article 133(2) EPC). Section 2 must always be completed if a professional representative or a legal practitioner entitled to act as such (Article 134(1) and (8)) is appointed.

3. Authorisation (Rule 152 EPC)

Under Rule 152(1) to (3) EPC in conjunction with the decision of the President of the EPO dated 12 July 2007, professional representatives who identify themselves as such are required to file a signed authorisation only in particular circumstances (see Special edition No. 3, OJ EPO 2007, L.1). However, a legal practitioner entitled to act as a professional representative under Article 134(8) EPC or an employee acting for an applicant under Article 133(3), first sentence, EPC who is not a professional representative must file a signed authorisation unless an authorisation which expressly empowers him to act in proceedings established by the EPC has previously been filed with the EPO as receiving Office.

If an association registered with the EPO is appointed as representative (Rule 152(11) EPC) (see OJ EPO 2013, 535), the association's registered name and registration number must be indicated.

If an authorisation is required, the use of EPA/EPO/OEB Form 1003 is recommended for individual authorisations and EPO Form 1004 for general authorisations.

4. Request for examination (Articles 150(2) and 94 and Rule 70 EPC)

4.1 First check box

The request for examination is not deemed to be filed until the examination fee has been paid (Article 94(1) and Rule 70(1) EPC). The box for

the request is pre-crossed in section 4.1 of Form 1200.

Persons having their residence or principal place of business in an EPC contracting state with an official language other than English, French or German, and nationals of that state who are resident abroad, may file the request for examination in an admissible non-EPO language (Article 14(4) EPC), using the space provided.

4.1 Second check box

For applicants who file the request for examination in an admissible non-EPO language in addition to the (pre-crossed) request in the language of the proceedings, the examination fee is reduced by 30% provided they are an SME, a natural person, a non-profit organisation, a university or a public research organisation (Rule 6(4) EPC, Article 14(1) RFees).

Under Rule 6(6) EPC, applicants wishing to benefit from the fee reduction must declare that they are an entity or natural person covered by Rule 6(4) EPC. They must file this declaration at the latest by the time of payment of the fee in question, either by crossing this box or separately (for this purpose, non-mandatory EPA/EPO/OEB Form 1011 is available from the EPO website). If there are multiple applicants, for the reduction to apply, each one must be an entity or a natural person within the meaning of Rule 6(4) EPC. In such cases, it is however sufficient for only one of the multiple applicants to be entitled to file documents in an admissible non-EPO language (Article 14(4), Rule 6(3) EPC). For more details see the notice from the EPO dated 10 January 2014 concerning amended Rule 6 EPC and Article 14(1) RFees (OJ EPO 2014, A23).

The request for examination is available in all admissible non-EPO languages on the EPO website.

The request for examination (i.e. written request plus payment of the examination fee) must be filed either up to six months from the date on which the international search report (or the declaration under Article 17(2)(a) PCT) was published (Article 153(6) EPC) or within 31 months from the filing date or, where applicable, the (earliest) priority date, whichever period ends later. In practice this means that the request for examination must be submitted within the 31-month period (Rule 159(1)(f) EPC), unless the international search report was published late.

5. Additional copies of the documents cited in the supplementary European search report

One or more additional sets of copies of the documents cited in the supplementary European search report (see Rule 65 EPC) can be ordered against payment of the flat-rate fee(s).

6. Documents intended for proceedings before the EPO (Rule 159(1)(b) EPC) and response to the written opinion established by the EPO (Rule 161(1) EPC)

When an application enters the European phase applicants must specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based (Rule 159(1)(b) EPC). Section 6 allows them to clarify whether they wish to proceed with

- the **published documents**, whereby any amended claims filed with the International Bureau under Article 19 PCT replace the originally filed claims, unless expressly stated to the contrary – in proceedings before the EPO as **designated Office** without PCT Chapter II (section 6.1), or
- the documents on which the **international preliminary examination report is based** – in proceedings before the EPO as **elected Office** under PCT Chapter II (section 6.2).

Sections 6.1 and 6.2 also provide the possibility to indicate that amended documents filed on entry into the European phase are to form the basis for the grant procedure.

For Euro-PCT applications where a supplementary European search report will not be prepared, the following applies (see Guidelines for Examination in the EPO, E-IX, 3.2, for details):

Where the EPO has acted as the International Searching Authority (ISA) and, if a demand under Article 31 PCT was filed, also as the International Preliminary Examining Authority (IPEA), or as the Supplementary International Searching Authority (SISA), the applicant will be required to respond to any negative written opinion (WO-ISA) prepared by the EPO as ISA, or, where applicable, to the negative international preliminary examination report (IPER) prepared by the EPO as IPEA, or to the objections raised in the explanations given in the Supplementary International Search Report (SISR) under Rule 45*bis*.7(e) PCT, as the case may be. The time limit for response is six months from the invitation under Rule 161(1) EPC (see OJ EPO 2010, 634). Failure to respond in due time will lead to the application being deemed to be withdrawn (Rule 161(1) EPC).

New amendments (Articles 28 and 41 PCT) and/or comments which are filed on entry into the regional phase before the EPO will be considered to constitute a response to the WO-ISA, or to the IPER or the explanations given in the SISR, as the case may be, if the applicant indicates on Form 1200 that such amendments and/or comments are to form the basis for further prosecution of the application. Similarly, amendments under Article 19 and/or 34 PCT filed

in the international phase and maintained on entry into the European phase by making the appropriate entries on Form 1200 may constitute a response, subject to certain requirements (see Guidelines for Examination in the EPO, C-III, 2.2, and E-IX, 3, for details).

The applicant must therefore clearly indicate the documents which are to form the basis for further prosecution of the application by crossing the appropriate boxes in section 6.1 or 6.2 as applicable.

In all cases, the applicant should specify in the **table on page 8** of Form 1200 the documents which are to be used for the European phase and therefore form the basis for calculation of any additional fee. Any exceptional circumstances which may need further explanation must be clarified on an **additional sheet**.

The applicant can also amend the application at any time within a non-extendable period of six months from the communication (Forms 1226AA, 1226BB, 1226CC) under Rule 161(1) and (2) EPC, which is issued shortly after effective entry into the European phase.

Pages of amendments filed during the six-month period under Rule 161 EPC are not taken into account in the calculation of the additional fee as part of the filing fee. Consequently, if amendments are filed at this stage which reduce the number of pages already paid for, no refund of the additional fee will be made.

If application documents filed on entry into the European phase contain handwritten amendments, an invitation to remedy this deficiency will be issued, and in case of non-compliance the application will be refused (see the notice from the EPO dated 8 November 2013 concerning application of Rules 49 and 50 EPC to handwritten amendments, OJ EPO 2013, 603).

Whenever amendments are filed, the applicant must identify them and indicate the basis for them in the application as filed (Rule 137(4) EPC) (see Guidelines for Examination in the EPO, E-IX, 3.4, and H-III, 2.1 and 2.1.1). If he fails to do so, the examining division may issue a communication under Rule 137(4) EPC requesting the correction of the deficiency within a non-extendable period of one month. If he then fails to reply within that period, the application will be deemed to be withdrawn under Article 94(4) EPC.

If the applicant has supplied **test reports** in proceedings before the EPO as International Preliminary Examining Authority, the EPO assumes that it may also use them in the European grant proceedings.

6.3 Copies of the search results (Rule 141(1) EPC)

For each of the previous applications whose priority is claimed, a copy of the search results produced by the authority with which the application was filed (Rule 141(1) EPC) has to be supplied. This obligation applies to European patent applications and international applications filed on or after 1 January 2011 (see OJ EPO 2010, 410, OJ EPO 2011, 64, and OJ EPO 2013, 217).

This box is to be crossed only if the copies of the documents are indeed supplied when filing the form for entry into the European phase. If, however, a copy of the search results is included in the file by the EPO, no action is required on the part of the applicant (see OJ EPO 2016, A19).

7. Translations

7.1 Translation of the international application

If the international application was **not** published in an EPO official language, the applicant must furnish the EPO with a translation of that application in such a language within 31 months of the filing date or, where applicable, the (earliest) priority date.

The proceedings in the European phase will be conducted in the language of the translation. The translation must include the description, the claims as originally filed, any text in the drawings, and the abstract. It must also include any indications under Rule 13*bis*.3 and 13*bis*.4 PCT in the case of inventions relating to biological material and any published request for rectification (Rule 91.3(d) PCT).

7.2 Translation of the priority application

Under Rule 53(3) EPC, applicants may be invited by the EPO to file a translation of the previous (priority) application (see also OJ EPO 2013, 150).

Alternatively, they can submit a declaration under Rule 53(3) that the European patent application is a complete translation of the previous application. They can do this by crossing the box in section 7.3. In this case, no invitation to file a translation of the priority application will be issued.

7.4 Claims amended under Article 19 PCT

If the applicant wishes the subsequent proceedings to be based on the claims as amended under Article 19 PCT, the translation must also include those claims, together with any explanatory statement (Rule 49.5(a)(ii), 49.5(c) and (c-*bis*) PCT) and, in any event, the accompanying letter under Rule 46.5(b) PCT.

7.5 Translation of annexes

Where **PCT Chapter II** applies, applicants must prepare and file translations of all annexes to the international preliminary examination report (Article 36(2)(b) and (3)(b), Rule 70.16(a) PCT, Rule 74.1 PCT), regardless of whether they are seeking patent protection for the same version of the application documents as was the subject of that report.

8. Biological material

To enable the EPO to check compliance with the requirements under Rule 13*bis* PCT in conjunction with Rule 31(1)(c) EPC, applicants should indicate the name and address of the depositary institution and the accession number of the deposited biological material in section 8. In addition, the identification reference of the biological material can be specified.

Applicants should also indicate where in the description the information required under Rule 31(1)(c) EPC (depositary institution and the deposit accession number) or the depositor's identification reference can be found.

To further enable the EPO to check compliance with Rule 31 EPC, the receipt issued by the depositary institution is to be submitted to the EPO. Applicants are strongly advised to submit the receipt when filing this form.

Waiver under Rule 33(1) and (2) EPC

Applicants may waive their right under Rule 33(1) and (2) EPC to an undertaking from the requester to issue a sample of the biological material, provided that they are the depositor of the biological material concerned. This waiver must be expressly declared to the EPO in the form of a separate, signed statement. It must specify the biological material concerned (depositary institution and accession number or depositor's reference number as shown in the application documents). It may be submitted at any time.

9. Nucleotide and amino acid sequences

9.1 If the application discloses one or more nucleotide and/or amino acid sequences, a sequence listing in electronic form complying with the applicable WIPO standard and the Administrative Instructions under the PCT is normally available to the EPO as designated/elected Office if such sequence listing was contained in the international application in accordance with Rule 5.2(a) PCT, furnished to the EPO as International Authority under Rule 13*ter*.1(a) PCT, or otherwise made available to it, e.g. by WIPO.

9.2 If the application discloses one or more nucleotide and/or amino acid sequences and a sequence listing in electronic form complying with the Administrative Instructions under the PCT. i.e. WIPO Standard ST.25 or ST.26, depending on

the international date of filing, is not available to the EPO as designated/elected Office, a standardised electronic sequence listing must be filed on entry into the European phase. Otherwise, the EPO will invite the applicant to file the sequence listing (Rule 163(3) EPC). In this case, a late furnishing fee is payable. For further information, see Rules 163(3) and 30(3) EPC, as well as the decision of the President of the EPO and the notice from the EPO dated 9 December 2021 concerning the filing of sequence listings (OJ EPO 2021, A96 and A97).

If the standardised sequence listing is submitted on entry into the European phase, the applicant must declare that the subsequently filed sequence listing does not include matter which goes beyond the content of the application as originally filed. The declaration can be made by crossing the relevant box in section 9.2.

10. Designation of contracting states

All the contracting states designated in the international patent application and party to the EPC at the time of its filing are deemed to be designated (see Article 79(1) EPC). Thus the EPC contracting states that can be validly designated on entry into the European phase are already specified in the international phase (Rule 4.9(a) PCT). For international applications entering the regional phase on or after 1 April 2009, payment of the flat-rate designation fee covers all the EPC contracting states, unless individual designations are expressly withdrawn (Article 2, item 3, RFees) (see OJ EPO 2009, 118).

11. Extension/validation

The application and the European patent granted in respect of it are extended or validated, in accordance with section 11 of Form 1200, to or in those non-EPC contracting states designated for a national patent in the international application with which extension or validation agreements were in force at the time of filing of the international application.

The request for extension or validation for a state is deemed withdrawn if the extension/validation fee is not paid to the EPO within the time limit laid down in the EPC for paying the designation fee (Rule 159(1)(d) EPC) (see Guidelines for Examination in the EPO, A-III, 12).

11.1 Extension of European patent applications and the resulting European patents may be requested for countries with which the EPO has extension agreements (as at October 2022: Bosnia and Herzegovina).

11.2 Validation of European patent applications and the resulting European patents may be requested for countries with which the EPO has validation agreements (as at October 2022: Morocco, the

Republic of Moldova, Tunisia and Cambodia). The EPO publishes the necessary information about such agreements on its website and in its Official Journal in good time before their entry into force. With regard to Cambodia, please note that pharmaceutical products are currently excluded from patent protection until 2033 (OJ EPO 2018, A16).

12. Acceleration of procedure

The ways in which the European grant procedure can be expedited in addition to the "PACE" request are listed in the notice from the EPO dated 30 November 2015 (OJ EPO 2015, A94). The options available on entry into the European phase are gathered together in this section for ease of selection.

12.1 Early processing

Request for the early start of processing in the European phase ("early entry")

Applicants who wish the EPO as designated or elected Office to start processing an application before expiry of the 31-month time limit under Rule 159(1) EPC must file an express request for early processing. The request can be made by crossing box 12.1.

A request for early processing is effective on the date of its filing only if the requirements of Rule 159(1) EPC applicable on that date have been complied with. The nature of the requirements to be met depends on the date on which the request for early processing is filed (see the notice from the EPO dated 21 February 2013 concerning the request for early processing, [OJ EPO 2013, 156](#), II.7 and 8).

Applicants must take note of the **consequences** of an effective request for early processing (see OJ EPO 2013, 156, III.9 and 10). Crossing box 12.1 must therefore be carefully considered.

An effective request for early processing **terminates the international phase** in respect of the EPO as designated/elected Office. This means that the application will be processed **immediately** as a European application as from the date the request for early processing is effective, and reversion to the 31-month time limit is excluded. This implies, for instance, that the time limits for filing the request for examination and paying the examination fee, the designation fee and the third renewal fee are those applying to a European application, and are no longer deferred to expiry of the 31-month time limit under Rule 159(1) EPC.

The automatic debiting of all relevant fees is available for requests for early processing filed on or after 1 November 2017 (see Arrangements for the automatic debiting procedure (AAD,

Annexes A.1 and A.2 to the ADA)). However, automatic debiting can only be performed if the documents referred to in Article 20 PCT are available to the EPO, so that it can establish whether or not a page fee for the 36th and each subsequent page must be debited. These documents are normally available to the EPO if

- the international application has already been published,
- the EPO is the receiving Office, or
- the EPO acts as (S)ISA or IPEA.

In all other cases, if they want the request to take effect immediately, applicants must pay the relevant fees due on filing the request for early processing by a means of payment other than automatic debiting. Otherwise the request will only take effect on the day on which the EPO receives the documents referred to in Article 20 PCT from the IB in accordance with Rule 47.4 PCT.

Applicants are recommended to read the notice from the EPO dated 21 February 2013 concerning the request for early processing (OJ EPO 2013, 156). Further information is available in the Guidelines for Examination in the EPO, E-IX, 2.8, and the Euro-PCT Guide.

12.2 Waivers

Waiver of communication pursuant to Rules 161 and 162 EPC

The time limit under Rules 161 and 162 EPC is **six months** (see OJ EPO 2010, 634).

In order to accelerate the European grant procedure applicants can, in addition to filing a "PACE" request, expressly **waive their right to the communication under Rules 161(1) or (2) and 162 EPC** by crossing the first box in section 12.2.

The EPO will not issue a communication under Rules 161(1) or (2) and 162 EPC only if, in addition to the "waiver", on entry into the European phase the applicant has also fulfilled all the requirements of Rules 161 and 162 EPC (i.e. payment of any claims fees due and, where required, submission of a response under Rule 161(1) EPC) for the application to proceed directly to the supplementary European search or to examination. To accelerate the processing of the application further, the applicant can request accelerated search or examination under the PACE programme (see the notice from the EPO dated 30 November 2015 concerning the programme for accelerated prosecution of European patent applications ("PACE"), OJ EPO 2015, A93).

Where the right to the communication under Rules 161(1) or (2) and 162 EPC has not been

validly waived, the communication will be issued and the application will be processed only after expiry of the six-month period provided for under those rules, even if a request under the PACE programme has been filed.

See also the notices from the EPO dated 5 April 2011 and 30 November 2015 (OJ EPO 2011, 354 and OJ EPO 2015, A94).

Waiver of the invitation under Rule 70(2) EPC

Applicants who file the request for examination before receiving the supplementary European search report are asked by the EPO, after the search report has been sent, to confirm within a six-month period that they wish to proceed further with the application (Rule 70(2) EPC). Where they also have to respond to the search opinion, their response is required within this same period (Rule 70a(2) EPC). To accelerate the procedure, they can waive their right to be asked for such confirmation by crossing the second box in section 12.2, in which case confirmation is deemed to be given when the supplementary European search report is transmitted to them. With regard to the legal consequences, see Guidelines for Examination in the EPO, C-VI, 3.

13. Payment

Fees due in respect of a patent application can be paid in a number of different ways, i.e. by debiting a deposit account, by credit card or by bank transfer. For more information, including information on how to claim refunds, see "[Fee payments and refunds](#)" on the EPO website.

Debiting a deposit account/automatic debiting

The procedure for paying by debiting a deposit account or by automatic debiting is set out in detail in the Arrangements for deposit accounts (ADA), the Arrangements for the automatic debiting procedure (AAD, Annex A.1 to the ADA) and the Information from the EPO concerning the automatic debiting procedure (Annex A.2 to the ADA) published in the supplementary publication to the EPO's Official Journal.

Careful attention should be paid to the conditions applicable to the filing of debit orders.

Payment by credit card

Payments by credit card must be made via the EPO's credit card fee payment service available on the EPO website, using a credit card accepted by the EPO (as at October 2022: American Express, Master Card and VISA). The procedure is set out in detail in the notice from the European Patent Office concerning the payment of fees by credit card published in the EPO's Official Journal.

Bank transfers

The procedure for paying by bank transfer is set out in detail in the notice from the European Patent Office concerning fee payments via bank transfer published in the EPO's Official Journal.

Payments by bank transfer should be made to the following account with the Commerzbank in Germany:

Account No. 3 338 800 00 / Sort code 700 800 00

IBAN DE20 7008 0000 0333 8800 00

BIC DRESDEFF700

Commerzbank AG
Leopoldstrasse 230
80807 Munich
Germany

For fee information, see "Guidance for the payment of fees, costs and prices", which is published regularly in the EPO's Official Journal.

For the fee amounts, see the publication "Schedule of fees and expenses" or the "Interactive schedule of fees" available on the EPO website under "[European \(EPC\) fees](#)".

III. Table for section 6 of Form 1200.3 – Documents intended for proceedings before the EPO

The table is used for calculating the additional fee for applications comprising more than 35 pages (Article 2, item 1a, RFees).

Questions about this communication?

Contact Customer Services at www.epo.org/contact

Date	2022
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Reference	Application No./Patent No.
Applicant/Proprietor	

Entry into the European phase before the European Patent Office

The following information describes the procedural steps required for entry into the European phase before the European Patent Office (EPO) as designated/elected Office. You are advised to read it carefully because failure to take the necessary action in due time can lead to a loss of rights.

1. The above mentioned international patent application has been given the **European application No.**
This application number is to be used in correspondence with the EPO.

2. Applicants **without a residence or their principal place of business** in an EPC Contracting State may themselves initiate European processing of their international applications, provided they do so before expiry of the 31st month from the priority date.

During the European phase before the EPO as designated or elected Office, however, such applicants **must** be represented by a professional representative (Art. 133(2) and Art. 134(1) and (8) EPC).

Where, at the expiry of the time period laid down in Rule 163(5) EPC, the requirements of Article 133(2) EPC have not been complied with, the European patent application will be **refused**, pursuant to Rule 163(6) EPC.

Please note that a professional representative authorised to act before the EPO and who acted for the applicant during the international phase does not automatically become the representative for the European phase. Applicants are therefore strongly advised to appoint in good time any representative they wish to initiate the European phase for them; otherwise the EPO has to send all communications directly to the applicant.

3. Applicants **with a residence or their principal place of business** in an EPC Contracting State are not obliged to appoint for the European phase a professional representative authorised to act before the EPO. However, in view of the complexity of the procedure it is recommended that they do so.
4. Applicants and professional representatives are also strongly advised to initiate the European phase using **EPO Form 1200**. It is available free of charge from the EPO or via the EPO website at **www.epo.org**. Similarly, it can be generated using the Online Filing software, obtainable free of charge from the EPO, or using Online Filing 2.0. The use of the form is not compulsory.

5. Applicants wishing to use an address for correspondence which is different from the address of their

seat or residence are advised to indicate this address in section 1 of EPO Form 1200. When acting as designated or elected Office, the EPO will accept an address for correspondence only if no professional representative must be or is appointed (Art. 133 and 134 EPC). This address must be the applicant's own address and must be located in an EPC Contracting State. Any address for correspondence accepted for the procedure in the international phase which does not fulfil those conditions will not be accepted in the procedure before the EPO in the European phase.

6. To enter the European phase before the EPO as designated or elected Office (Art. 22(1) and (3) and 39(1) PCT), the **following acts** must be performed by the applicant within **31 months** from the date of filing of the international application or (where applicable) the earliest priority date:
- a) Supply a translation of the international application into an EPO official language, if the International Bureau did not publish the application in such language (Art. 22(1) PCT and R. 159(1)(a) EPC);
 - b) Specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based (R. 159(1)(b) EPC);
 - c) Pay the filing fee and, where applicable, the additional fee for a European patent application comprising more than 35 pages (R. 159(1)(c) EPC, Art. 2(1), items 1, 1a Rules relating to Fees (RFees));
 - d) Pay the search fee where a supplementary European search report has to be drawn up (R. 159(1)(e) EPC);
 - e) Pay the designation fee if the time limit laid down in Rule 39(1) EPC (i.e. six months after publication of the international search report) has expired before the 31-month period pursuant to Rule 159(1) EPC (R. 159(1)(d) EPC);
 - f) File the written request for examination and pay the examination fee if the time limit laid down in Rule 70(1) EPC has expired before the 31-month period pursuant to Rule 159(1) EPC (R. 159(1)(f) EPC);
 - g) Pay the renewal fee in respect of the third year, if the fee has fallen due (see Rule 51(1) EPC) before expiry of the 31-month period pursuant to Rule 159(1) EPC (R. 159(1)(g) EPC);
 - h) File, where applicable, the certificate of exhibition referred to in Article 55(2) and Rule 25 EPC (R. 159(1)(h) EPC);
 - i) Pay the claims fees for the sixteenth and each subsequent claim when the application documents on which the European grant procedure is to be based comprise more than fifteen claims (R. 162(1) EPC). A higher amount is payable for the 51st and each subsequent claim (Art.2(1), item 15 RFees).

If either the translation of the international application or the request for examination is not filed in time, or if the filing fee, the additional fee, the search fee, the designation fee or the examination fee is not paid in due time, the application shall be deemed to be withdrawn (R. 160(1) EPC).

7. Making payments

For payments made via deposit account, please note that as from 1 December 2017 debit orders will only be carried out if filed in an electronically processable format (xml), using an accepted means of filing as laid down in the Arrangements for deposit accounts (ADA), published in a Supplementary publication to the Official Journal.

All relevant information related to the modes of payment of fees to the EPO can be retrieved from the EPO website at "**Making Payments**".

Information concerning fee amounts

Procedural fees are usually adjusted every two years, on even years, with effect from 1 April. Therefore, before making a payment, parties should verify the amounts actually due on the date of payment using the applicable version of the Schedule of fees and expenses, published as a Supplement to the Official Journal of the EPO, available on the EPO website (www.epo.org) at www.epo.org/schedule-of-fees . The "Schedule of fees" table allows the viewing, downloading and searching of individual fee amounts, both current and previous.

8. Restoration of priority right

Where the international application contains a priority claim to an earlier application and it has been filed within two months from the expiration of the 12-month priority period, a request for restoration before the EPO as designated Office (R. 49*ter*.2 PCT) applies under the following circumstances:

- a) No request for restoration filed before the receiving Office (RO) during the international phase (R. 26*bis*.3 PCT)
- b) Negative decision by the RO irrespective of the criterion applied (due care/unintentionality)
- c) Positive decision by the RO based on the unintentionality criterion.

For a request to be admissible, it must be filed and the requisite fee must be paid (R. 49*ter*.2(b)(iii) and R. 49*ter*.2(d) PCT, Art.2(1), item 13 RFees) within the one-month time limit under R. 49*ter*.2(b)(i) PCT for filing the request, which starts from the expiry of the 31-month time limit pursuant to Rule 159(1)EPC and Article 22(3) or 39(1)(b) PCT or, where applicable, from the date on which an effective request for early processing (Art. 23(2) or 40(2) PCT) is filed ('Notice from the European Patent Office dated 21 February 2013 concerning the request for early processing', OJ EPO 2013, 158). The request for restoration also needs to state the reasons for the failure to file the international application within the priority period (Rule 49*ter*.2(b)(ii) PCT).

9. Incorporation by reference of correct application documents under Rule 20.5*bis*(d) PCT - incompatibility of Rule 20.5*bis*(d) PCT with the EPC

If the receiving Office considered correct application documents to be incorporated by reference under Rule 20.5*bis*(d) PCT without changing the filing date, this incorporation will not be effective in the proceedings before the EPO as designated or elected Office as a result of the EPO's notification of incompatibility of Rule 20.5*bis*(a)(ii) and (d) PCT with the EPC (OJ EPO 2020, A81).

In such cases, applicants may inform the EPO within the 31-month time limit under Rule 159(1) EPC:

- a) that they wish to pursue the application containing the correct application documents with the date of receipt of those application documents as its filing date, or
- b) that the correct application documents are to be disregarded and the initial filing date is to be maintained.

If the EPO is not so informed within the 31-month time limit, the procedure laid down in the Notice of the EPO dated 14 June 2020 concerning the applicability of new Rule 20.5*bis* PCT on the correction of erroneous filings in proceedings before the EPO (OJ EPO 2020, A81) will apply.

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10. If the applicant had appointed a representative during the application's international phase, the present Form will be sent to the representative, asking him to inform the applicant accordingly. All subsequent communications will be sent to the applicant, or - if the EPO is informed of his appointment in time - to the applicant's European representative.
11. For more details about time limits and procedural acts before the EPO as designated or elected Office, see the EPO brochure Euro-PCT Guide: PCT procedure at the EPO. This brochure, the list of professional representatives before the EPO, Form 1200 and details of the latest fees are available on the EPO website (www.epo.org) .

12. Programme for accelerated prosecution of European patent applications - "PACE"

Applicants wishing to accelerate proceedings before the EPO as designated or elected Office may request accelerated prosecution under the PACE programme (Notice from the European Patent Office dated 30 November 2015 concerning the programme for accelerated prosecution of European patent applications - "PACE", OJ EPO 2015, A93).

Receiving Section



Questions about this communication?
Contact Customer Services at www.epo.org/contact

Date	2022
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Reference	Application No./Patent No.
Applicant/Proprietor	

Noting of loss of rights pursuant to Rule 112(1) EPC

The European patent application cited above is deemed to be withdrawn (R. 160(1) EPC) for the reason(s) mentioned below:

- ☒ non payment / non-submission within the period specified in Rule 159(1) EPC:
- ☐ translation of the international application into one of the EPO's official languages (Art. 153(4) and R. 159(1)(a) EPC)
 - ☒ filing fee (Art. 78(2) and R. 159(1)(c) EPC), including (if applicable)
 - ☐ additional fee for pages (R. 159(1)(c) and R. 38(2) EPC, Art. 2(1)1a. RFees)
 - ☒ designation fee (R. 159(1)(d) and R. 39(1) EPC)
 - ☒ search fee (Art. 78(2) and R. 159(1)(e) EPC)
 - ☒ request for examination (Art. 94(1), R. 70(1) and R. 159(1)(f) EPC)
 - ☒ written request for examination
 - ☒ examination fee
 - ☐ payment of the above fees on, after expiry of the period for payment (on).

For information on the calculation of the additional fee for applications comprising more than 35 pages, see the Notice from the EPO dated 26 January 2009 concerning the 2009 fee structure (OJ EPO 2009, 118) and the Notice supplementing the notice from the EPO dated 26 January 2009 concerning the 2009 fee structure (OJ EPO 2009, 338).

Means of redress

Request for a decision (R. 112(2) EPC)

If the applicant considers that the finding of the European Patent Office is inaccurate, he may, within a (non-extendable) period of **two months** after notification of this communication, apply in writing for a decision on the matter. The application can only lead to the finding being reversed if this does not actually correspond to the factual or legal situation.

Further processing (Art. 121 EPC)

The legal consequence of the failure to observe the time limit(s) shall be deemed not to have ensued if, within a (non-extendable) period of **two months** after notification of this communication, further processing is requested by payment of the fee(s) prescribed under Article 2(1)12 of the Rules relating to Fees and the omitted act(s) is (are) completed (R. 135(1) EPC).

Registered Letter

In the case of a request for further processing with respect to the time limit for payment of the designation fee, **any non-paid extension or validation fee(s)** may still be paid with a **surcharge** of 50% of the relevant fee(s) within a (non-extendable) period of **two months** after notification of this communication.

The time limits for filing the translation and paying the filing fee, including any additional fee, the designation fee, the search fee and for requesting examination, including paying the examination fee, are legally independent from each other. Therefore, where all of them have been missed, further processing must be requested, and the corresponding further processing fee must be paid, in respect of each of them.

If the loss of rights has occurred due to non-filing the translation or the written request for examination within the time limits under Rules 159(1)(a) and 159(1)(f) EPC, the flat-rate amount of the further processing fee (Art. 2(1)12, third indent, RFees) is due.

If the loss of rights has occurred due to the non-payment of the filing fee, including the additional fee, the designation fee, the search fee or the examination fee within the 31-month period under 159(1) EPC, 50% of the non-paid fee (Art. 2(1)12, first indent, RFees) is due for requesting further processing (in respect of each of the time limits missed).

If the applicant is entitled under Article 14(4) and Rules 6(3) and (4) EPC to benefit from, and has paid, the reduced examination fee, but has failed to timely file the declaration under Rule 6(6) EPC, the flat-rate amount of the further processing fee (Art. 2(1)12, third indent, RFees) is due if the declaration is filed within the time limit for requesting further processing.

Request under Article 7(3) and (4) Rules relating to Fees

The fee is considered to have been paid in due time if, within a period of two months from notification of this communication and in accordance with the requirements under Article 7(3) and (4) Rules relating to Fees, evidence is provided to the EPO that the payment was effected in an EPC Contracting State within the period in which the payment should have been made.

Note

For applicants not having either a residence or principal place of business within the territory of one of the EPC Contracting States, the completion of the omitted acts (other than the non-payment of fees) for the purposes of a request under Article 121 EPC, or the filing of a request under Rule 112(2) EPC may only be undertaken by a professional representative authorised to act before the EPO.

Making payments

For payments made via deposit account, please note that as from 1 December 2017 debit orders will only be carried out if filed in an electronically processable format (xml), using an accepted means of filing as laid down in the Arrangements for deposit accounts (ADA), published in the Supplementary publication in the Official Journal.

All relevant information related to the modes of payment of fees to the EPO can be retrieved from the EPO website at **"Making Payments"**.

Information concerning fee amounts

Procedural fees are usually adjusted every two years, on even years, with effect from 1 April. Therefore, before making a payment, parties should verify the amounts actually due on the date of payment using the applicable version of the Schedule of fees and expenses, published as a Supplement to the Official Journal of the EPO, available on the EPO website (www.epo.org) at www.epo.org/schedule-of-fees. The "Schedule of fees" table allows the viewing, downloading and searching of individual fee amounts, both current and previous.

Receiving Section



Mitteilung des Europäischen Patentamts vom 21. Februar 2013 über den Antrag auf vorzeitige Bearbeitung

I. Einführung

1. In den letzten Jahren hat die Zahl der beim EPA als Bestimmungsamt/ausgewähltem Amt gestellten Anträge auf vorzeitige Bearbeitung zugenommen. Infolgedessen und aufgrund der Entscheidung J 18/09 sind beim EPA einige Anfragen zur Praxis des Amts bei der Bearbeitung solcher Anträge eingegangen.¹

2. Teil II dieser Mitteilung gibt Auskunft über die Erfordernisse für die Wirksamkeit eines Antrags auf vorzeitige Bearbeitung einer Euro-PCT-Anmeldung. In Teil III werden die Folgen eines derartigen Antrags für das Verfahren in der europäischen Phase dargelegt. Teil IV behandelt einige damit verbundene Fragen. Teil V enthält verschiedene Beispiele zur Veranschaulichung des Verfahrens. Diese Mitteilung ergänzt die im Euro-PCT-Leitfaden enthaltenen Informationen zur vorzeitigen Bearbeitung.²

II. Antrag auf vorzeitige Bearbeitung

3. Eine internationale Anmeldung darf vom Bestimmungsamt/ausgewählten Amt nicht bearbeitet werden, solange die Frist nach Artikel 22 und 39 PCT für die Vornahme der für den Eintritt in die nationale Phase erforderlichen Handlungen nicht abgelaufen ist. Dieses "Bearbeitungsverbot" gilt für Bestimmungssämter und ausgewählte Ämter gemäß Artikel 23 (1) bzw. 40 (1) PCT.

4. Die Frist für die Vornahme der für den Eintritt in die europäische Phase vor dem EPA als Bestimmungsamt/ausgewähltem Amt erforderlichen Handlungen beträgt 31 Monate nach dem Anmeldedatum bzw., wenn eine Priorität in Anspruch genommen wurde, nach dem Prioritätsdatum (R. 159 (1) EPÜ,

Notice from the European Patent Office dated 21 February 2013 concerning the request for early processing

I. Introduction

1. In recent years the number of requests for early processing filed with the EPO as designated/elected Office has risen. As a result thereof and consequent to decision J 18/09 the EPO has received a number of enquiries concerning the EPO's practice in processing such requests.¹

2. In its Part II this notice gives information about the requirements for a request for early processing of a Euro-PCT application to be effective. In Part III, the consequences of such a request for the procedure in the European phase are set out. In Part IV some related issues are addressed. Various examples providing insight into the procedure are presented in Part V. The present notice further clarifies the information on early processing in the Euro-PCT Guide.²

II. Request for early processing

3. The processing of an international application by a designated/elected Office is prohibited until expiry of the time limit under Articles 22 and 39 PCT for performing the acts for entry into the national phase. This "processing ban" applies to designated and elected Offices pursuant to Articles 23(1) and 40(1) PCT respectively.

4. The applicable time limit for performing the acts for entry into the European phase before the EPO as designated/elected Office is 31 months from the filing date or, if priority has been claimed, the priority date (Rule 159(1) EPC, Articles 22(3) and 39(1)(b) PCT). Therefore, the EPO as designated/

Communiqué de l'Office européen des brevets, en date du 21 février 2013, concernant la requête en traitement anticipé

I. Introduction

1. Ces dernières années ont été marquées par une augmentation du nombre de requêtes en traitement anticipé présentées auprès de l'OEB agissant en qualité d'office désigné/élu. Compte tenu de cette évolution et de la décision J 18/09, l'OEB a reçu un certain nombre de demandes de renseignement concernant la manière dont il traite ces requêtes.¹

2. Le présent communiqué expose, dans sa partie II, les conditions de validité d'une requête en traitement anticipé pour une demande euro-PCT. La partie III présente les conséquences d'une telle requête pour la procédure dans la phase européenne. La partie IV traite certaines questions connexes. Plusieurs exemples donnant un aperçu de la procédure figurent dans la partie V. Le présent communiqué contribue à clarifier les informations relatives au traitement anticipé contenues dans le Guide euro-PCT.²

II. Requête en traitement anticipé

3. Aucun office désigné/élu n'est autorisé à traiter une demande internationale avant l'expiration du délai prévu aux articles 22 et 39 PCT pour accomplir les actes relatifs à l'entrée dans la phase nationale. Cette "interdiction de traitement" s'applique aux offices désignés (article 23.1) PCT) et aux offices élus (article 40.1) PCT).

4. Le délai applicable pour accomplir les actes relatifs à l'entrée dans la phase européenne devant l'OEB agissant en qualité d'office désigné/élu est de 31 mois à compter de la date de dépôt ou, si une priorité a été revendiquée, de la date de priorité (règle 159(1) CBE, articles 22.3) et 39.1(b) PCT). L'OEB agissant en

¹ J 18/09, ABl. EPA 2011, 480.

² Leitfaden für Anmelder – 2. Teil (Euro-PCT-Leitfaden), Nr. 427 ff., http://www.epo.org/applying/international/guide-for-applicants_de.html.

¹ J 18/09, OJ EPO 2011, 480.

² Guide for applicants – Part 2 (Euro-PCT Guide), point 427 ff., <http://www.epo.org/applying/international/guide-for-applicants.html>.

¹ J 18/09, JO OEB 2011, 480.

² Guide du déposant, 2^e partie (Guide euro-PCT), points 427 s., http://www.epo.org/applying/international/guide-for-applicants_fr.html.

Art. 22 (3) und 39 (1) b) PCT). Deshalb beginnt das EPA als Bestimmungsamt/ ausgewähltes Amt mit der Bearbeitung einer internationalen Anmeldung erst nach Ablauf der 31-Monatsfrist. Davon wird eine Ausnahme gemacht, wenn der Anmelder das Bearbeitungsverbot früher aufhebt. Dazu muss beim EPA als Bestimmungsamt/ausgewähltem Amt ein Antrag auf vorzeitige Bearbeitung gemäß Artikel 23 (2) oder 40 (2) PCT gestellt werden (s. Nr. 5), und die Erfordernisse für die Wirksamkeit des Antrags müssen erfüllt sein (s. Nrn. 6 und 7).

5. Ein Antrag auf vorzeitige Bearbeitung kann beim EPA jederzeit vor Ablauf der 31-Monatsfrist gestellt werden. Für den Antrag ist keine konkrete Formulierung vorgeschrieben, der Anmelder muss jedoch deutlich zum Ausdruck bringen, dass er die vorzeitige Bearbeitung seiner Anmeldung vor dem EPA als Bestimmungsamt/ausgewähltem Amt wünscht. Der Klarheit halber wird empfohlen, im Antrag ausdrücklich auf Artikel 23 (2) PCT bzw. gegebenenfalls Artikel 40 (2) PCT zu verweisen.

6. Damit der Antrag wirksam ist, muss der Anmelder die Erfordernisse der Regel 159 (1) EPÜ erfüllen, als liefe die 31-Monatsfrist an dem Tag ab, an dem er die vorzeitige Bearbeitung beantragt. Es sind also die folgenden Erfordernisse zu erfüllen: Entrichtung der Anmeldegebühr (einschließlich einer etwaigen Zusatzgebühr nach Art. 2 (1) Nr. 1a Gebührenordnung, wenn die Anmeldung mehr als 35 Seiten umfasst), Einreichung der Übersetzung (sofern eine Übersetzung nach Art. 153 (4) EPÜ erforderlich ist), Angabe der Anmeldungsunterlagen und Entrichtung der Recherchegebühr (wenn nach Art. 153 (7) EPÜ ein ergänzender europäischer Recherchenbericht erstellt werden muss).

7. Welche weiteren in Regel 159 (1) EPÜ genannten Erfordernisse zu erfüllen sind, hängt davon ab, an welchem Tag die vorzeitige Bearbeitung beantragt wird, denn die (Grund-)Fristen für die Entrichtung der Benennungsgebühr (R. 39 (1) EPÜ) und der Jahresgebühr (R. 51 (1) EPÜ) sowie für die Stellung des Prüfungsantrags und die Entrichtung der Prüfungsgebühr (R. 70 (1) EPÜ) sind am Tag der Antragstellung möglicherweise noch nicht abgelaufen. Läuft eine

elected Office will not commence processing an international application before the 31-month time limit has expired. An exception applies if the applicant lifts the processing ban earlier. This requires that a request for early processing under Articles 23(2) or 40(2) PCT is filed with the EPO as designated/elected Office (point 5) and that the requirements for the request to be effective are complied with (points 6-7).

5. A request for early processing may be filed with the EPO at any time before expiry of the 31-month time limit. The request does not require a specific wording, but the applicant must clearly express that he wishes the processing of his application before the EPO as designated/elected Office to commence early. For the sake of clarity it is advised that the request explicitly refers to Article 23(2) PCT or, where applicable, Article 40(2) PCT.

6. For the request to be effective the applicant must comply with the requirements stipulated in Rule 159(1) EPC as if the 31-month time limit expired on the date the applicant requests early processing. This means that the following requirements must be complied with: payment of the filing fee (including any additional fee under Article 2(1), item 1a, of the Rules relating to Fees if the application comprises more than 35 pages), filing of a translation (if a translation is required under Article 153(4) EPC), specification of the application documents, and payment of the search fee (where a supplementary European search report has to be drawn up under Article 153(7) EPC).

7. It depends on the date on which early processing is requested which further requirements stipulated in Rule 159(1) EPC must be complied with, since the (regular) time limits for paying the designation fee (Rule 39(1) EPC) and the renewal fee (Rule 51(1) EPC) and for filing the request for examination and paying the examination fee (Rule 70(1) EPC) may not have expired on the date the request for early processing is filed. Therefore, if any of these time limits is

qualité d'office désigné/élu ne commencera donc pas à traiter une demande internationale avant l'expiration du délai de 31 mois, sauf si le déposant lève précédemment l'interdiction de traitement. Dans ce cas, une requête en traitement anticipé au titre des articles 23.2) ou 40.2) PCT doit être présentée auprès de l'OEB agissant en qualité d'office désigné/élu (point 5) et les conditions de validité de la requête doivent être remplies (points 6-7).

5. Une requête en traitement anticipé peut être présentée auprès de l'OEB à tout moment avant l'expiration du délai de 31 mois. Aucune formulation particulière n'est prescrite pour la requête, mais le déposant doit indiquer clairement qu'il souhaite un traitement anticipé de sa demande devant l'OEB agissant en qualité d'office désigné/élu. Dans un souci de clarté, la requête devrait se référer expressément à l'article 23.2) PCT ou, le cas échéant, à l'article 40.2) PCT.

6. La requête n'est valable que si le déposant se conforme aux exigences énoncées à la règle 159(1) CBE comme si le délai de 31 mois expirait à la date à laquelle il requiert le traitement anticipé. Cela signifie qu'il doit se conformer aux exigences suivantes : acquitter la taxe de dépôt (et, le cas échéant, une taxe additionnelle au titre de l'article 2(1), point 1bis du règlement relatif aux taxes si la demande comporte plus de 35 pages), produire une traduction (si une traduction est requise au titre de l'article 153(4) CBE), préciser les pièces de la demande et acquitter la taxe de recherche (lorsqu'un rapport complémentaire de recherche européenne doit être établi au titre de l'article 153(7) CBE).

7. Les autres conditions à remplir en application de la règle 159(1) CBE dépendent de la date à laquelle la requête en traitement anticipé est présentée, puisque les délais (ordinaires) pour acquitter la taxe de désignation (règle 39(1) CBE) et la taxe annuelle (règle 51(1) CBE), ainsi que pour présenter la requête en examen et acquitter la taxe d'examen (règle 70(1) CBE) peuvent ne pas avoir encore expiré à la date de présentation de la

dieser Fristen an diesem Tag noch, so ist der Antrag wirksam, ohne dass die entsprechenden Erfordernisse erfüllt sind (Art. 153 (2) EPÜ, Art. 11 (3) PCT).

still running on that date, the request will be effective without the requirements concerned having been complied with (Article 153(2) EPC, Article 11(3) PCT).

requête en traitement anticipé. Par conséquent, si l'un de ces délais court encore à cette date, la requête sera valable sans que les conditions concernées aient été remplies (article 153(2) CBE et article 11.3) PCT).

8. Daraus folgt, dass die Erfordernisse der Regel 159 (1) EPÜ, die für eine bestimmte internationale Anmeldung erfüllt sein müssen, variieren, denn sie hängen ab von der jeweiligen internationalen Anmeldung (s. Nr. 6) und dem Tag der Stellung des Antrags auf vorzeitige Bearbeitung (s. Nr. 7). Diese Erfordernisse werden deshalb im Folgenden als "notwendige Erfordernisse" bezeichnet.

8. It follows that the requirements of Rule 159(1) EPC which must be fulfilled in respect of a particular international application vary, since they depend on the international application concerned (point 6) and on the filing date of the request for early processing (point 7). Therefore, these requirements are hereafter referred to as "necessary requirements".

8. Il s'ensuit que les conditions à remplir en application de la règle 159(1) CBE pour une demande internationale donnée varient, puisqu'elles dépendent de la demande internationale concernée (point 6) et de la date de présentation de la requête en traitement anticipé (point 7). Ces conditions sont donc désignées ci-après par l'expression "conditions requises".

III. Folgen eines wirksamen Antrags auf vorzeitige Bearbeitung

III. Consequences of an effective request for early processing

III. Conséquences d'une requête valable en traitement anticipé

9. Sind am Tag der Stellung des Antrags auf vorzeitige Bearbeitung die notwendigen Erfordernisse für den Eintritt in die europäische Phase erfüllt, ist der Antrag wirksam, und die Euro-PCT-Anmeldung wird *ab diesem Tag* so bearbeitet wie eine Euro-PCT-Anmeldung, die in die europäische Phase eingetreten ist, indem sie die notwendigen Erfordernisse der Regel 159 EPÜ innerhalb der 31-Monatsfrist erfüllt hat und ohne dass ein Antrag auf vorzeitige Bearbeitung gestellt wurde. An diesem Tag endet also die internationale Phase in Bezug auf das EPA als Bestimmungsamt/ausgewähltes Amt. Da mit der Stellung eines wirksamen Antrags auf vorzeitige Bearbeitung das Bearbeitungsverbot aufgehoben ist, ist zudem eine Inanspruchnahme der 31-Monatsfrist nach Regel 159 (1) EPÜ von diesem Tag an ausgeschlossen.

9. If on the date the request for early processing is filed the necessary requirements for entry into the European phase are complied with, the request is effective and the Euro-PCT application will as *from that date* be processed in the same way as a Euro-PCT application which has entered the European phase by fulfilling the necessary requirements of Rule 159 EPC within the 31-month time limit and without a request for early processing having been filed. On that date the international phase is thus terminated in respect of the EPO as designated/elected Office. Moreover, since by filing an effective request for early processing the processing ban is lifted, as from that date it is no longer possible to claim the 31-month time limit under Rule 159(1) EPC.

9. Si les conditions requises pour l'entrée dans la phase européenne sont remplies à la date de présentation de la requête en traitement anticipé, la requête est valable et la demande euro-PCT sera traitée, *à compter de cette date*, comme une demande euro-PCT entrée dans la phase européenne en remplissant les conditions requises par la règle 159 CBE dans le délai de 31 mois et sans qu'une requête en traitement anticipé ait été présentée. La phase internationale est donc close à cette date pour l'OEB agissant en qualité d'office désigné/élu. En outre, étant donné que la présentation d'une requête valable en traitement anticipé lève l'interdiction de traitement, il n'est plus possible de se prévaloir du délai de 31 mois prévu par la règle 159(1) CBE à compter de cette date.

10. Hervorzuheben sind insbesondere die nachstehenden Folgen eines wirksamen Antrags auf vorzeitige Bearbeitung:

10. In particular the following consequences of an effective request for early processing are important to note:

10. Il convient en particulier de noter les conséquences suivantes d'une requête valable en traitement anticipé :

– Läuft die Frist für die Einreichung des Prüfungsantrags und die Entrichtung der Prüfungsgebühr gemäß Regel 70 (1) EPÜ und für die Entrichtung der Benennungsgebühr gemäß Regel 39 (1) EPÜ nach dem Tag ab, an dem der Antrag auf vorzeitige Bearbeitung wirksam wurde und werden diese Handlungen nicht innerhalb dieser Frist vorgenommen, erlässt das EPA eine Mitteilung über die Feststellung eines Rechtsverlusts nach Regel 112 (1) EPÜ (s. Beispiele unter den Nrn. 18 - 20).

– If the time limit under Rule 70(1) EPC for filing the request for examination and payment of the examination fee and under Rule 39(1) EPC for payment of the designation fee expires after the date on which the request for early processing was effective and these acts are not performed within that time limit, the EPO will issue a communication noting a loss of rights pursuant to Rule 112(1) EPC (see the examples in points 18-20).

– Si le délai prévu, d'une part, par la règle 70(1) CBE pour présenter la requête en examen et acquitter la taxe d'examen et, d'autre part, par la règle 39(1) CBE pour acquitter la taxe de désignation expire après la date de validité de la requête en traitement anticipé et que ces actes ne sont pas accomplis dans ce délai, l'OEB établira une notification constatant la perte d'un droit au titre de la règle 112(1) CBE (cf. exemples aux points 18-20).

– Ab dem Tag, an dem der Antrag auf vorzeitige Bearbeitung wirksam wird, errechnet sich der Fälligkeitstag der Jahresgebühr auf der Grundlage von Regel 51 (1) EPÜ. Wird die Jahresgebühr weder innerhalb dieser Frist noch innerhalb der Nachfrist von 6 Monaten gemäß Regel 51 (2) EPÜ (unter Zahlung der Zuschlagsgebühr) entrichtet, erlässt das EPA eine Mitteilung über die Feststellung eines Rechtsverlusts nach Regel 112 (1) EPÜ (s. Beispiele unter den Nrn. 21 - 22).

– Das EPA erlässt die Mitteilung nach Regel 161/162 EPÜ unmittelbar nachdem es festgestellt hat, dass der Antrag auf vorzeitige Bearbeitung wirksam ist.

– Der Anmelder kann ab dem Tag, an dem der Antrag auf vorzeitige Bearbeitung wirksam wird, eine Teilanmeldung einreichen.

– Ab dem Tag, an dem der Antrag des Anmelders auf vorzeitige Bearbeitung wirksam wird, hat eine spätere Zurücknahme gemäß Regel 90*bis* PCT keine Wirkung im Hinblick auf das Verfahren in der europäischen Phase (R. 90*bis*.6 PCT).

11. Ist am Tag der Stellung des Antrags auf vorzeitige Bearbeitung ein notwendiges Erfordernis nicht erfüllt, so wird der Antrag auf vorzeitige Bearbeitung (erst) an dem Tag wirksam, an dem alle an diesem Tag notwendigen Erfordernisse erfüllt sind. Erst an diesem Tag tritt die Anmeldung in die europäische Phase ein und wird von da an so bearbeitet wie jede Euro-PCT-Anmeldung, die in die europäische Phase eingetreten ist.

IV. Weitere Hinweise

12. Gebühren, die zu entrichten sind, damit der Antrag auf vorzeitige Bearbeitung wirksam ist, dürfen nicht über einen automatischen Abbuchungsauftrag bezahlt werden, denn in diesem Fall werden die Gebühren erst am letzten Tag der 31-Monatsfrist abgebucht und damit entrichtet.

13. Ist nach Regel 159 (1) h) EPÜ eine Ausstellungsbescheinigung einzureichen, so macht die Nichterfüllung dieses Erfordernisses den Antrag auf vorzeitige

– As from the date the request for early processing is effective, the due date for payment of the renewal fee is to be established on the basis of Rule 51(1) EPC. If it is not paid within this period and also not within the additional six-month period pursuant to Rule 51(2) EPC (including payment of the additional fee), the EPO will issue a communication noting a loss of rights pursuant to Rule 112(1) EPC (see the examples in points 21-22).

– The EPO will issue the communication under Rule 161/162 EPC directly after it has established that the request for early processing is effective.

– As from the date the request for early processing is effective, the applicant may file a divisional application.

– From the date the applicant's request for early processing is effective, any subsequent withdrawal under Rule 90*bis* PCT will have no effect in respect of the procedure in the European phase (Rule 90*bis*.6 PCT).

11. If on the date the request for early processing is filed any necessary requirement is not complied with, the request for early processing will be effective (only) as from the date on which all requirements necessary on the latter date have been complied with. It is only on that date that the application enters the European phase, and from that moment on is processed in the same way as any Euro-PCT application which has entered the European phase.

IV. Further points to note

12. Fees which need to be paid for a request for early processing to be effective must not be paid by automatic debit order, since in that case the fees are debited – and thus paid – only on the last day of the 31-month time limit.

13. If pursuant to Rule 159(1)(h) EPC a certificate of exhibition must be filed and this requirement is not met, this will not prevent the request for early processing

– A compter de la date de validité de la requête en traitement anticipé, la date d'échéance de la taxe annuelle doit être déterminée conformément à la règle 51(1) CBE. Si la taxe annuelle n'est acquittée ni dans ce délai ni dans le délai supplémentaire de six mois prévu par la règle 51(2) CBE (sous réserve du paiement d'une surtaxe), l'OEB établira une notification constatant la perte d'un droit au titre de la règle 112(1) CBE (cf. exemples aux points 21-22).

– L'OEB établira une notification au titre de la règle 161/162 CBE directement après avoir constaté que la requête en traitement anticipé est valable.

– Le déposant peut déposer une demande divisionnaire à compter de la date de validité de la requête en traitement anticipé.

– A compter de la date de validité de la requête en traitement anticipé présentée par le déposant, un retrait ultérieur au titre de la règle 90*bis* PCT n'aura aucun effet sur la procédure dans la phase européenne (règle 90*bis*.6 PCT).

11. Si une condition requise n'est pas remplie à la date de présentation de la requête en traitement anticipé, la requête sera valable (uniquement) à compter de la date à laquelle toutes les conditions requises à cette date auront été remplies. Ce n'est qu'à cette date que la demande entre dans la phase européenne et qu'à partir de ce moment qu'elle est traitée comme toute demande euro-PCT entrée dans la phase européenne.

IV. Autres aspects importants

12. Les taxes à acquitter pour qu'une requête en traitement anticipé soit valable ne doivent pas être acquittées par ordre de prélèvement automatique, car les taxes ne sont alors prélevées – et donc acquittées – que le dernier jour du délai de 31 mois.

13. Si une attestation d'exposition doit être produite au titre de la règle 159(1)(h) CBE et que cette condition n'est pas remplie, cela n'empêchera pas la

Bearbeitung zwar nicht unwirksam, hat aber Auswirkungen auf den Stand der Technik, den das EPA im Verfahren in der europäischen Phase berücksichtigt.

14. Anspruchsgebühren für den 16. und jeden weiteren Anspruch müssen erst mit Ablauf der Frist nach Regel 162 (2) EPÜ entrichtet werden. Ihre Entrichtung ist daher kein Erfordernis für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung.

15. Will der Anmelder mit dem Antrag auf vorzeitige Bearbeitung erreichen, dass nicht nur die Bearbeitung der Anmeldung vor dem EPA als Bestimmungsamt/ausgewähltem Amt, sondern auch die Prüfung der Anmeldung aufgenommen wird, so muss er einen wirksamen Prüfungsantrag gemäß Artikel 94 EPÜ gestellt haben (einschließlich Entrichtung der Prüfungsgebühr), auch wenn die Frist gemäß Regel 70 (1) EPÜ am Tag des wirksamen Eintritts in die europäische Phase noch nicht abgelaufen ist, denn mit der Prüfung wird erst begonnen, wenn ein Prüfungsantrag wirksam gestellt wurde.

16. Wird der Prüfungsantrag gestellt, bevor das EPA dem Anmelder gegebenenfalls den ergänzenden europäischen Recherchenbericht übermittelt hat, beginnt die Prüfung erst bei Eingang einer Absichtserklärung des Anmelders über die Aufrechterhaltung der Anmeldung und, falls erforderlich, einer Erwiderung auf den erweiterten europäischen Recherchenbericht. Der Anmelder kann auf die Aufforderung, zu erklären, ob die Anmeldung aufrechterhalten wird, verzichten. Dies kann er in Feld 4.2 des Formblatts 1200 angeben.

17. Ist das EPA als Bestimmungsamt tätig und hat das IB dem EPA noch keine Kopie der internationalen Anmeldung, des ISR und des WO-ISA übermittelt, so kann der Anmelder beim IB einen entsprechenden Antrag stellen, ist aber nicht dazu verpflichtet. Falls nötig, kümmert sich das EPA selbst darum (R. 44bis.2 b) PCT, R. 47.4 PCT). Gleiches gilt, wenn das EPA als ausgewähltes Amt tätig ist und das IB ihm noch keine Kopie der internationalen Anmeldung, des ISR, des WO-ISA und des IPER und der dazugehörigen Anlagen übermittelt hat (R. 73.2 b) PCT).

from being effective, but it will affect the prior art that the EPO takes into account in the procedure in the European phase.

14. Claims fees for any claims in excess of fifteen need only be paid upon expiry of the period under Rule 162(2) EPC. Therefore, their payment is not a requirement for a request for early processing to be effective.

15. If early processing is requested because the applicant wishes not only the processing of the application before the EPO as designated/elected Office but also the examination of the application to start, he must have filed a valid request for examination (including payment of the examination fee) under Article 94 EPC, even if the time limit under Rule 70(1) EPC has not yet expired at the date of effective entry into the European phase, since examination will be taken up only if a request for examination has been validly filed.

16. Furthermore, if a request for examination is filed before the EPO has, where applicable, sent the supplementary European search report to the applicant, examination will start only upon receipt of an indication from the applicant that he wishes to proceed further with the application and, if required, of a response to the extended European search report. The applicant may waive his right to be asked whether he wishes to proceed further. He can indicate this in box 4.2 of Form 1200.

17. If the EPO acts as designated Office and the IB has not yet transmitted to it a copy of the international application, the ISR and the WO-ISA, the applicant may but does not have to file with the IB a request to do so. If needed, the EPO will take care of this itself (Rule 44bis.2(b) PCT, Rule 47.4 PCT). The same applies if the EPO acts as elected Office and the IB has not yet transmitted to it a copy of the international application, the ISR, the WO-ISA and the IPER with its annexes (Rule 73.2(b) PCT).

requête en traitement anticipé d'être valable, mais cela affectera l'état de la technique pris en considération par l'OEB dans la procédure dans la phase européenne.

14. Les taxes de revendication exigibles à partir de la seizième revendication ne doivent être acquittées qu'à l'expiration du délai prévu par la règle 162(2) CBE. Leur paiement n'est donc pas une condition de validité de la requête en traitement anticipé.

15. Si le traitement anticipé est demandé parce que le déposant souhaite engager non seulement le traitement de la demande devant l'OEB agissant en qualité d'office désigné/élu, mais aussi l'examen de la demande, le déposant doit avoir présenté une requête en examen valable (et acquitté la taxe d'examen) au titre de l'article 94 CBE, même si le délai prévu par la règle 70(1) CBE n'a pas encore expiré à la date d'entrée effective dans la phase européenne, étant donné que l'examen ne sera engagé que si une requête en examen a été valablement présentée.

16. En outre, si une requête en examen est présentée avant que l'OEB n'ait, le cas échéant, transmis le rapport complémentaire de recherche européenne au déposant, l'examen ne commencera que lorsque le déposant aura déclaré qu'il souhaite maintenir sa demande et, si nécessaire, pris position sur le rapport de recherche européenne élargi. Le déposant peut renoncer à être invité à déclarer s'il souhaite maintenir sa demande. Pour ce faire, il peut cocher la case 4.2 du formulaire 1200.

17. Si l'OEB agit en qualité d'office désigné et que le Bureau international (BI) ne lui a pas encore transmis une copie de la demande internationale, de l'ISR et de la WO-ISA, le déposant peut présenter au BI une requête en ce sens, mais il n'est pas tenu de le faire. Si nécessaire, l'OEB s'en chargera lui-même (règle 44bis.2.b) PCT, règle 47.4 PCT). Il en va de même si l'OEB agit en qualité d'office élu et que le BI ne lui a pas encore transmis une copie de la demande internationale, de l'ISR, de la WO-ISA et de l'IPER avec ses annexes (règle 73.2(b) PCT).

V. Beispiele

18. *Beispiel 1: Entrichtung der Benennungsgebühr und Prüfungsantrag (einschließlich Entrichtung der Prüfungsgebühr)*

Antrag auf vorzeitige Bearbeitung:
1.8.2012
Veröffentlichung des internationalen
Recherchenberichts: 10.10.2012

Am Tag der Stellung des Antrags auf vorzeitige Bearbeitung haben die Fristen nach Regel 39 (1) und 70 (1) EPÜ noch nicht zu laufen begonnen. Deshalb sind die Entrichtung der Benennungsgebühr und die Stellung des Prüfungsantrags (einschließlich Entrichtung der Prüfungsgebühr) keine notwendigen Erfordernisse für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung. Die Entrichtung der Benennungsgebühr und die Stellung des Prüfungsantrags sind innerhalb der Fristen nach Regel 39 (1) bzw. 70 (1) EPÜ möglich. Werden diese Handlungen nicht innerhalb dieser Fristen vorgenommen, gilt die Anmeldung als zurückgenommen, und der Anmelder wird entsprechend unterrichtet.

19. *Beispiel 2: Entrichtung der Benennungsgebühr und Prüfungsantrag (einschließlich Entrichtung der Prüfungsgebühr)*

Veröffentlichung des internationalen
Recherchenberichts: 1.6.2012
Antrag auf vorzeitige Bearbeitung:
1.8.2012

Am Tag der Stellung des Antrags auf vorzeitige Bearbeitung haben die Fristen nach Regel 39 (1) und 70 (1) EPÜ zu laufen begonnen, sind aber noch nicht abgelaufen. Deshalb sind die Entrichtung der Benennungsgebühr und die Stellung des Prüfungsantrags (einschließlich Entrichtung der Prüfungsgebühr) keine notwendigen Erfordernisse für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung. Die Entrichtung der Benennungsgebühr und die Stellung des Prüfungsantrags sind innerhalb der Fristen nach Regel 39 (1) bzw. 70 (1) EPÜ möglich. Werden diese Handlungen nicht innerhalb dieser Fristen vorgenommen, gilt die Anmeldung als zurückgenommen, und der Anmelder wird entsprechend unterrichtet.

V. Examples

18. *Example 1: payment of designation fee and request for examination (including payment of examination fee)*

Request for early processing:
1.8.2012
Publication of international search report:
10.10.2012

On the date the request for early processing is filed, the periods pursuant to Rules 39(1) and 70(1) EPC have not yet started. Therefore, paying the designation fee and filing the request for examination (including the payment of the examination fee) are not necessary requirements for the request for early processing to be effective. The designation fee can be paid and the request for examination can be filed within the periods pursuant to Rules 39(1) and 70(1) EPC, respectively. If these acts are not performed within these periods, the application will be deemed to be withdrawn and the applicant will be notified thereof.

19. *Example 2: payment of designation fee and request for examination (including payment of examination fee)*

Publication of international search report:
1.6.2012
Request for early processing:
1.8.2012

On the date the request for early processing is filed, the periods pursuant to Rules 39(1) and 70(1) EPC have started but not yet expired. Therefore, paying the designation fee and filing the request for examination (including payment of the examination fee) are not necessary requirements for the request for early processing to be effective. The designation fee can be paid and the request for examination can be filed within the periods pursuant to Rules 39(1) and 70(1) EPC, respectively. If these acts are not performed within these periods, the application will be deemed to be withdrawn and the applicant will be notified thereof.

V. Exemples

18. *Exemple 1 : paiement de la taxe de désignation et requête en examen (incluant le paiement de la taxe d'examen)*

Requête en traitement anticipé :
1.8.2012
Publication du rapport de recherche
internationale : 10.10.2012

Les délais prévus par les règles 39(1) et 70(1) CBE n'ont pas encore commencé à courir à la date de présentation de la requête en traitement anticipé. Le paiement de la taxe de désignation et la présentation de la requête en examen (incluant le paiement de la taxe d'examen) ne sont donc pas des conditions requises afin que la requête en traitement anticipé soit valable. La taxe de désignation peut être acquittée dans le délai prévu par la règle 39(1) CBE et la requête en examen peut être présentée dans le délai prévu par la règle 70(1) CBE. Si ces actes ne sont pas accomplis dans ces délais, la demande sera réputée retirée et le déposant en sera informé.

19. *Exemple 2 : paiement de la taxe de désignation et requête en examen (incluant le paiement de la taxe d'examen)*

Publication du rapport de recherche
internationale : 1.6.2012
Requête en traitement anticipé :
1.8.2012

Les délais prévus par les règles 39(1) et 70(1) CBE ont commencé à courir, mais n'ont pas encore expiré, à la date de présentation de la requête en traitement anticipé. Le paiement de la taxe de désignation et la présentation de la requête en examen (incluant le paiement de la taxe d'examen) ne sont donc pas des conditions requises afin que la requête en traitement anticipé soit valable. La taxe de désignation peut être acquittée dans le délai prévu par la règle 39(1) CBE et la requête en examen peut être présentée dans le délai prévu par la règle 70(1) CBE. Si ces actes ne sont pas accomplis dans ces délais, la demande sera réputée retirée et le déposant en sera informé.

20. Beispiel 3: Entrichtung der Benennungsgebühr und Prüfungsantrag (einschließlich Entrichtung der Prüfungsgebühr)

Veröffentlichung des internationalen
Recherchenberichts: 1.6.2012
Antrag auf vorzeitige Bearbeitung:
1.3.2013

Die Fristen nach den Regeln 39 (1) und 70 (1) EPÜ sind abgelaufen. Deshalb sind die Entrichtung der Benennungsgebühr und die Stellung des Prüfungsantrags (einschließlich Entrichtung der Prüfungsgebühr) notwendige Erfordernisse für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung. Ist am Tag der Stellung des Antrags auf vorzeitige Bearbeitung die Benennungsgebühr nicht entrichtet und/oder der Prüfungsantrag nicht gestellt, so wird der Antrag auf vorzeitige Bearbeitung (erst) an dem Tag wirksam, an dem die Benennungsgebühr entrichtet und/oder der Prüfungsantrag gestellt ist (einschließlich Entrichtung der Prüfungsgebühr) und alle weiteren an diesem Tag notwendigen Erfordernisse erfüllt sind (s. Nr. 11).

20. Example 3: payment of designation fee and request for examination (including payment of examination fee)

Publication of international search report:
1.6.2012
Request for early processing:
1.3.2013

The periods pursuant to Rules 39(1) and 70(1) EPC have expired. Therefore, paying the designation fee and filing the request for examination (including payment of the examination fee) are necessary requirements for the request for early processing to be effective. If the designation fee is not paid and/or no request for examination is filed on the date early processing is requested, the request for early processing will be effective (only) as from the date on which the designation fee is paid and/or the request for examination (including payment of the examination fee) is filed and all further requirements necessary on the latter date have been complied with (see point 11).

20. Exemple 3 : paiement de la taxe de désignation et requête en examen (incluant le paiement de la taxe d'examen)

Publication du rapport de recherche internationale : 1.6.2012
Requête en traitement anticipé :
1.3.2013

Les délais prévus par les règles 39(1) et 70(1) CBE ont expiré. Le paiement de la taxe de désignation et la présentation de la requête en examen (incluant le paiement de la taxe d'examen) sont donc des conditions requises afin que la requête en traitement anticipé soit valable. Si la taxe de désignation n'est pas acquittée et/ou si aucune requête en examen n'est présentée à la date à laquelle le traitement anticipé est demandé, la requête en traitement anticipé sera valable (uniquement) à compter de la date où la taxe de désignation aura été acquittée et/ou la requête en examen (incluant le paiement de la taxe d'examen) présentée, et où toutes les autres conditions requises à cette date auront été remplies (cf. point 11).

21. Beispiel 4: Jahresgebühr

Anmeldetag: 3.1.2011
Antrag auf vorzeitige Bearbeitung:
3.12.2012

Nach Regel 51 (1) EPÜ ist die Jahresgebühr am 31.1.2013 fällig. Deshalb ist die Entrichtung der Jahresgebühr kein notwendiges Erfordernis für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung. Die Jahresgebühr kann aber bereits entrichtet werden, denn Jahresgebühren können drei Monate vor ihrer Fälligkeit entrichtet werden (R. 51 (1) EPÜ). Wird sie weder innerhalb dieser Frist noch innerhalb der Nachfrist von 6 Monaten gemäß Regel 51 (2) EPÜ (unter Zahlung der Zuschlagsgebühr) entrichtet, gilt die Anmeldung als zurückgenommen, und der Anmelder wird entsprechend unterrichtet.

21. Example 4: renewal fee

Date of filing: 3.1.2011
Request for early processing:
3.12.2012

Pursuant to Rule 51(1) EPC, the renewal fee is due on 31.1.2013. Therefore, payment of the renewal fee is not a necessary requirement for the request for early processing to be effective. However, the renewal fee may already be paid, since renewal fees can be paid three months before they fall due (Rule 51(1) EPC). If it is not paid within this period and also not within the additional six-month period (including payment of the additional fee) pursuant to Rule 51(2) EPC, the application will be deemed to be withdrawn and the applicant will be notified thereof.

21. Exemple 4 : taxe annuelle

Date de dépôt : 3.1.2011
Requête en traitement anticipé :
3.12.2012

Conformément à la règle 51(1) CBE, la taxe annuelle vient à échéance le 31.1.2013. Le paiement de la taxe annuelle n'est donc pas une condition requise afin que la requête en traitement anticipé soit valable. Toutefois, la taxe annuelle peut déjà être acquittée, étant donné que les taxes annuelles peuvent être acquittées trois mois avant leur échéance (règle 51(1) CBE). Si elle n'est acquittée ni dans ce délai ni dans le délai supplémentaire de six mois (sous réserve du paiement d'une surtaxe) conformément à la règle 51(2) CBE, la demande sera réputée retirée et le déposant en sera informé.

22. Beispiel 5: Jahresgebühr

Anmeldetag: 3.1.2011
Antrag auf vorzeitige Bearbeitung:
1.3.2013

Nach Regel 51 (1) EPÜ ist die Jahresgebühr am 31.1.2013 fällig. Die Entrichtung der Jahresgebühr (ohne Zuschlagsgebühr) ist deshalb ein notwendiges Erfordernis für die Wirksamkeit des Antrags auf vorzeitige Bearbeitung vom 1.3.2013. Ist am Tag der Stellung des Antrags auf vorzeitige Bearbeitung die Jahresgebühr nicht entrichtet, so wird der Antrag auf vorzeitige Bearbeitung (erst) an dem Tag wirksam, an dem die Jahresgebühr entrichtet ist und alle weiteren an diesem Tag notwendigen Erfordernisse erfüllt sind.

22. Example 5: renewal fee

Date of filing: 3.1.2011
Request for early processing:
1.3.2013

Pursuant to Rule 51(1) EPC, the renewal fee is due on 31.1.2013. Payment of the renewal fee (without additional fee) is, therefore, a necessary requirement for the request for early processing filed on 1.3.2013 to be effective. If the renewal fee is not paid on the date early processing is requested, the request for early processing will be effective (only) as from the date on which the renewal fee is paid and all further requirements necessary on the latter date have been complied with.

22. Exemple 5 : taxe annuelle

Date de dépôt : 3.1.2011
Requête en traitement anticipé :
1.3.2013

Conformément à la règle 51(1) CBE, la taxe annuelle vient à échéance le 31.1.2013. Le paiement de la taxe annuelle (sans surtaxe) est donc une condition requise afin que la requête en traitement anticipé présentée le 1.3.2013 soit valable. Si la taxe annuelle n'est pas acquittée à la date à laquelle le traitement anticipé est demandé, la requête en traitement anticipé sera valable (uniquement) à compter de la date où la taxe annuelle aura été acquittée et où toutes les autres conditions requises à cette date auront été remplies.



DELTAPATENTS

Training for Patent Professionals

PASSING THE EQE WITH DELTAPATENTS

DELTAPATENTS WELCOMES YOU

Why DeltaPatents?

DeltaPatents is a **patent attorney firm** based in the Netherlands with a passion for quality. We provide the highest quality advice and service to public and private companies at various stages of growth from start-up to Fortune 500. Our patent specialists have a deep technological knowledge and extensive industrial experience. Through our education activities, we stay ahead in terms of law changes, case law and procedural requirements.

We are proud to be a leading training organization for the **European Qualifying Examination (EQE)**. Our renowned courses can be followed throughout Europe. We offer a complete range of courses and high quality training material for the EQE. The knowledge and experience gained during more than 15 years of EQE training provides a solid basis for our comprehensive range of training courses in different areas. We offer **Continuing Education of Patent Attorneys** (e.g. patent law update course, a Unitary Patent course, and various IP master classes) across Europe as well as outside. For **R&D** (R&D managers, researchers, developers, inventors, entrepreneurs, IP management, IP coordinators and tech-transfer officers), we provide targeted IP tutorials and several workshops. These can also be organized in-house at your organization, open to other participants or exclusively in-house.

“It was a pleasure to study with such a skilled and nice instructor”

Our **blogs** keep you up-to-date on the EQE, EPO Case law, Patent procedures, Unitary Patent and Patent News.



In 2006 we started **training IP support staff**, culminating in a full training program preparing for the official Dutch Formalities Officers exam. The program includes training modules directed to EPC and PCT formalities. These training modules are offered throughout Europe.

Our training focuses on giving insight and understanding, and ensuring that the acquired knowledge can be practically applied. Unique for DeltaPatents is that we thoroughly train and guide our tutors. For our tutors, training is a profession, mastered by teamwork and frequent involvement in courses. We take feedback of attendants seriously and act on it. For us, quality and customer satisfaction are essential.

DeltaPatents' personal touch

We believe in teaching and treating candidates with a personal touch. You will be trained in small groups, giving ample opportunity to discuss unclear issues in more detail and get personal assistance.

Hospitality is important to us. For participants staying in Eindhoven for courses of multiple days, we organize a social event, such as a dinner or a trip to a local place of interest. We welcome contact (e.g. via e-mail, telephone or video chat) with our tutors to ask follow-up questions, to clarify course materials or to report mistakes.





PASSING THE EQE WITH DELTAPATENTS

EQE training

The EQE exam is notoriously difficult to pass. Despite most candidates studying hard, the pass rate of the Main Exam averages around 30%, with some fluctuations depending on the complexity of that year's exam. First-time sitters usually score a few percent higher.

All papers score low. In particular, Papers C and DII are major hurdles. Paper DI (legal part) requires a significant time investment in studying and mastering the EPC and PCT law, Guidelines, Ancillary Regulations and case law.

The low pass rates illustrate that, despite spending quite some time in preparation, you may fail. This is highly frustrating. Frequently heard comments are:

"The hardest exam I ever took"

"The first exam I ever failed"

To achieve success, you need to commit hundreds of hours to studying both legal theory and application of the law. You increase your chances by making a plan, attending the best courses available and using the highest quality materials available. You benefit from getting dedicated training focussed on passing this exam by tutors that know everything about this exam and what it needs to pass.

We specialize in providing courses and training material for the EQE, covering the Pre-Exam as well as each of the papers of the Main Exam. A full range of short modules have been developed, allowing each candidate to optimally complement already acquired knowledge and skills.



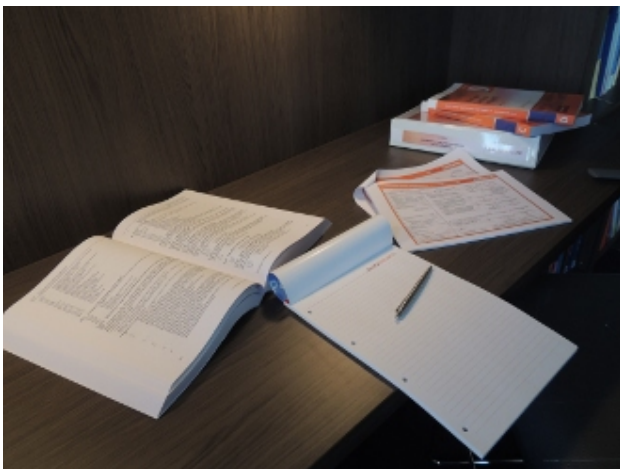
"I like the prescriptive style of the trainers: 'read this', 'don't read that'; I do not want endless options, I want to know how to pass the exam"



EQE Pre-Exam training

For the Pre-Exam, we offer:

- **Pre-Exam Integrated course**
This intensive 12-day course (in 4 blocks) will bring candidates from a basic level with no or limited legal knowledge to the level required for the EQE Pre-Exam. All legal topics, EPC procedural, EPC substantive and PCT, are covered. Legal interactive tutorials will be alternated with practicing what has been learned: candidates will experience from the start how this knowledge can be used in an efficient way in order to pass the Pre-Exam. Homework is an integral part of the course. The questions test absorption and understanding. We provide full answers for all homework questions for self-evaluation.
- **Pre-Exam Distance Learning**
The same as the Pre-Exam Integrated course, but as distance learning: with homework schedules and 2-/3-week video sessions.
- **Legal Methodology Course**
In this 1-day course, we explain how to answer the legal questions for the Pre-Exam. We will teach a methodology, which will help to score optimally on the legal part of the Pre-Exam and how to deal with the True/False format
- **Claim Analysis Course**
In this 2-day course, we cover the Claim Analysis part of the Pre-Exam with a specific exam methodology. The methodology is practiced using multiple choice questions and cases and one full pre-exam.



EQE Main Exam training

Our modular approach allows candidates to freely choose which paper(s) they wish to prepare for in a certain exam year. We offer:

- **Methodology courses for each paper**
In these 2 or 3 day courses, we detail the requirements of the paper and clarify the key issues of the paper. We give a step-by-step approach for efficiently handling the paper, including practical analysis techniques, checklists and guidance in optimising scoring of marks with the knowledge you have. The methodology is developed and tested over more than a decade. In the courses, we show how the methodology works by applying it to at least one exam paper.
Our methodology courses for re-sitters apply the methodology to the last exam paper.
- **(Guided) Exam courses for each paper**
We offer a variety of courses for guided practicing of papers, depending on demand. For example:
 - 2 or 3-day course wherein a handed-in paper is corrected and marked and discussed during the course. One more exam paper is practiced during the course, with guidance and assistance from the tutor.
 - 4- or 5-day Paper D Guided Trial Run course providing a final test of EQE readiness, combining guidance through up-to-date DI and DII exam questions with practice under time pressure.

“This C methodology course is much more effective than other courses I have attended before. The pointing out of all relevant legal provisions were very useful for me”

“The Paper C Methodology course is genius. I literally heard a click in my head”

“D Methodology course: a great combination of various tools, methodologies and discussion on how to deal with various issues in the exam”

“The D Methodology course should be mandatory!”

“The first time I have the impression that DII could be manageable ...”

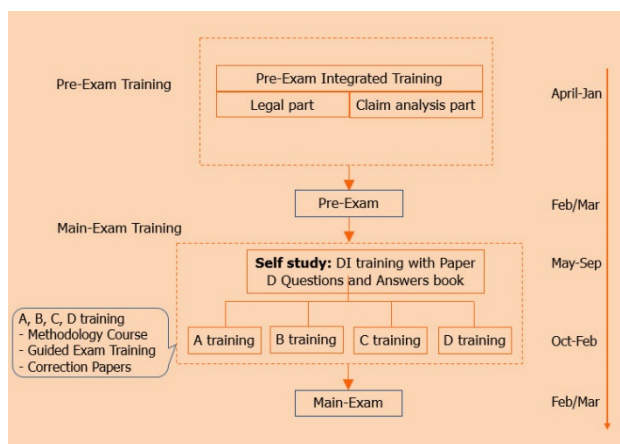
“Guided Exam: the ultimate tool for making it possible to pass!”

Integrated EQE training programs

Our modular system allows candidates to choose a program which matches their learning style and needs in prioritising study versus balancing it with focussing on work or private life. Here two exemplary programs are shown, a fast track program and a slow-track program. Please contact us to discuss how to optimise your preparation depending on your needs.

Fast track program

In this program, which is the default program in the Netherlands, candidates aim to pass the Pre-Exam, immediately followed by next year passing all four Main Exam papers.

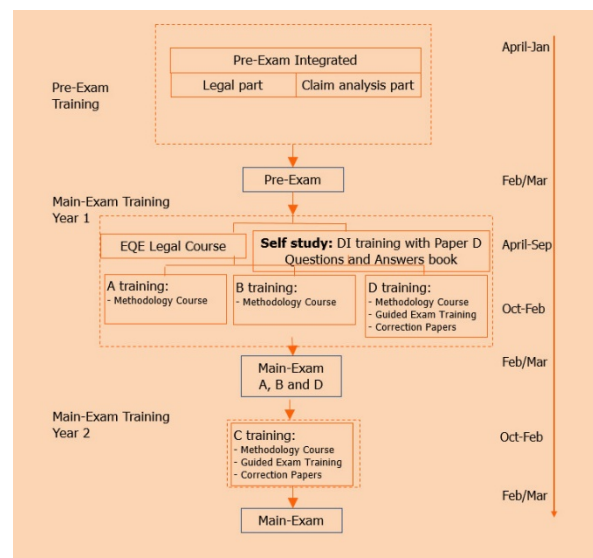


The Main Exam year will be challenging: four papers in parallel, including paper DI which requires a lot of hours of studying. To spread the load, a good legal preparation is already required in the Pre-Exam year. For this our Pre-Exam Integrated Training is ideal: legal and claim analysis integrated in one program. After finishing this course, you are ready for the Pre-Exam.

Slow track program

In this program, candidates plan a couple of years for passing the Main Exam. Here a schedule is shown wherein Papers A, B and D are taken in the first Main Exam and in the following year paper C is taken.

A candidate can choose to build up the legal knowledge relatively fast by following our Pre-Exam Integrated Training (legal parts) for the pre-exam, optionally followed by our Legal Refresher course. Alternatively, if less legal knowledge has been acquired for the pre-exam, the our Pre-Exam Integrated Training (legal parts) can be followed as a preparation before the Paper D training.



The Main Exam training can start with our Legal Refresher Course, followed by the training for the four papers in parallel. The paper training ideally starts with a Methodology Course, followed by a Guided Exam Training and, optionally, finished with our Correction Paper program.

EQE Distance Learning

We have developed this program during the past years for candidates who are unable to attend the DeltaPatents' courses, or for anyone looking for extra study and practice materials. We offer a "Correction of Papers" program and "Pre-Exam Distance Learning":

- Paper Correction: you hand-in exam papers and we correct them, giving individual feedback as well as our own detailed marking sheets and model solutions
- Pre-Exam Distance Learning: complete legal training for the Pre-Exam, with homework schedule and feedback of tutors on handed-in homework.



*Video sessions:
2- or 3-weekly video
conference sessions where
the tutor discusses the
upcoming modules and
answers questions from the
participants*



"I would like to thank you for all the help I received during my distance course Paper D. It really helped to have the pressure of handing in the homework and make me work steadily in the months before the exam"

Personal coaching

Based on our extensive experience in training candidate, we offer a one-to-one intensive personal coaching, wherein we, together with the candidate, determine the personal reasons for failing the exam, correct some of the mistakes, come to an approach optimized for the candidate and a recommended further preparation plan. The personal coaching will be agreed beforehand.

One possible scenario is where, before the personal session, the candidate prepares a paper at home and the tutor marks this. On a first afternoon of the personal guidance, the exam, known problems of the candidates and the prepared exam are discussed. On a second day, the candidate makes a further paper, which is immediately discussed with the tutor, finished by discussing a further preparation plan.



EP-wide in-house training

Training locations

We do not only provide training in our base in Eindhoven. The Netherlands, but many of our training modules are available at several locations in Europe to minimize your travel costs.

In-house training

All courses can also be given in-house. If required, a module can be tailored to your local organizational needs. Please contact us if you are interested in inviting us to your office.



About the EQE

In Supplement to OJ EPO 2/2014, you can find:

- Regulation on the European qualifying examination for professional representatives (REE)
- Implementing provisions to the Regulation on the European qualifying examination (IPREE)
- Instructions to candidates concerning the conduct of the European qualifying examination

The examination is organised and conducted by a Supervisory Board, an Examination Board, Examination Committees and an Examination Secretariat, comprising members from the EPI and EPO.

The EQE is designed to establish whether the candidate has the requisite aptitude and knowledge to represent applicants before the EPO.

EQE syllabus

Candidates need to be particularly conversant with European patent law, the Patent Cooperation Treaty, the Paris Convention, EPO board of appeal case law and certain national laws in so far as they apply to European patent applications and European patents. The content of the examination only relates to legal texts which were in force on 31 December of the year preceding the examination.

Languages

The examination papers are drawn up in the three official languages of the EPO (English, French and German). Candidates may choose any of these languages to answer in. Candidates may also be permitted to submit their answers in another official language of a Contracting State if so requested during enrolling for the exam.

Structure of the exam

The EQE, held once a year, comprises five papers, divided over a single paper Pre-examination (Pre-Exam), followed by a Main Exam consisting of four papers.

- Pre-Exam (4 hours)
Assesses candidates' ability to answer legal questions and questions relating to the drafting of claims. The exam is multiple-choice and consists of two parts; a legal part and a claims analysis part. The Pre-Exam must be passed before the Main Exam may be attempted.
- Main Exam
Candidates are free to choose the paper(s) they wish to sit in a certain year; they do not need to be taken in a prescribed order or combination.

- Paper A (4 hours)
Tests the candidate's ability to draft claims and the introductory part of a European patent application. As of the EQE 2017 there will be a single A paper.
- Paper B (3,5 hours)
Requires candidates to prepare a reply to an official letter in which prior art has been cited. As of the EQE 2017 there will be a single B paper.
- Paper C (5,5 hours)
Involves drafting a notice of opposition to a European patent.
- Paper D (5,5 hours)
Consists of two parts DI and DII and assesses candidates' ability to answer legal questions (DI) and to draft a legal advice (DII).

Passing the EQE

To pass the EQE, it is obligatory to pass all examination papers. Candidates may not enrol for any of the Main Exam papers until they have passed the Pre-Exam.

Each answer paper is marked on a scale from zero to 100 by the relevant Examination Committee.

For the Pre-Exam, a PASS grade is awarded for an answer Paper with 70 marks or more; otherwise a FAIL grade is awarded for that paper.

For the Main Exam, there is a compensatory system whereby under certain circumstances, low marks can be offset by good marks in other papers. For each paper of the Main Exam,

- a PASS grade is awarded for an answer paper with 50 marks or more;
- a FAIL grade is awarded for an answer paper with fewer than 45 marks;
- a COMPENSABLE FAIL grade is awarded for an answer paper with at least 45 but fewer than 50 marks

A candidate is declared to have passed the Main Exam once he has sat all the examination papers and if he satisfies all of the following conditions:

- he has not been awarded a FAIL grade in any of the papers
- he has been awarded a PASS grade in at least two papers, and
- his total aggregate mark in the four papers is at least 200.

If a candidate re-sits an examination paper, the marks and grade previously obtained for this paper are no longer valid. It is not possible to re-sit a passed exam.



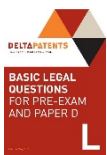
DeltaPatents' Web Shop for Training Material

For our courses, our professional tutors continuously develop and update the training material using input from past participants and to follow recent legal changes. Methodology books, books with Questions and Answers as well as very thorough model solutions for each paper are available for those who study for the EQE.

EQE Basic Legal Questions

The book contains:

- Introduction - how to prepare
- Study Guide
- Legal Questions and Answers in True/False format and open questions
- To prepare for Pre-Exam as well as Main Exam



EQE Main Exam Questions for Paper D

The completely updated book contains:

- A comprehensive Study Guide
- A list of abbreviations which may be used in your answer on the EQE
- A set of more than 350 legal and exam style questions, with a recommended minimum subset

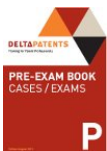


EQE Pre-Exam Cases and Exams

The book contains:

- Introduction - how to prepare
- Legal Cases
- Claim Analysis Cases

Pre-Exams 2014 - 2018, together with our proprietary model solutions explaining the answers



EQE Main Exam Methodology books

For EQE paper C, we have developed a methodology books. The book describes the requirements of the paper and, in combination with thorough discussion of the EPC provisions relevant for the paper, present a structured approach for tackling the paper.



EQE Main Exam Analysis/Model solutions For Paper AB, Paper C and Paper D Main Exam paper, we have developed very detailed and thorough

Analysis and Model Solutions.

The booklets cover analysis of the paper, applying the methodology to the paper and the correct answer, updated for the current law.




References to the EPC

By: Jelle Hoekstra

The ideal reference book for the EQE and daily use. The main book, of almost 900 pages, gives the EPC Articles, mixed with the Rules, relevant parts of the Guidelines, many selected Ancillary Regulations, all Enlarged Board decisions and all established case law. The book is a unique one-stop shop, covering all relevant information for the EPC part of the EQE.

Many flow-charts, legal overviews and tables are included to enable fast answering in the EQE.





**“VERY HELPFUL AND
MOTIVATED PEOPLE,
WHICH GIVES A VERY
INTERESTING AND
WARM FEELING
DURING THE
COURSE.”**



Meet the Tutors



Jelle Hoekstra



Roel van Woudenberg



Sander van Rijnsouw



Nico Cordes



Diane Tweedlie



Jessica Kroeze



Tnaja laCour



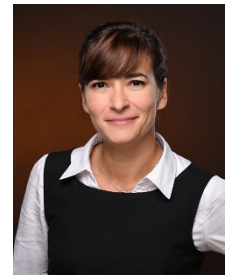
Joeri Beetz



Grégory Baque



Heide Götz



Cécile Kirsch



Mieke Zonjee

Contact

For more information please visit the DeltaPatents website (www.deltapatents.com) or contact Mieke Zonjee at DeltaPatents (training@deltapatents.com).



REGISTRATION FORM

FOR COURSES OFFERED IN THE NETHERLANDS, DENMARK, FRANCE, GERMANY, ITALY, SWEDEN AND UK

You may register by **fax** + 31 40 2366708 **mail** DeltaPatents B.V., Fellenoord 370, 5611 ZL Eindhoven, the Netherlands
website www.deltapatents.com **e-mail** training@deltapatents.com

name

company

address

billing-address (if different)

billing e-mail or phone

purchase order

VAT-number

tel. no.

e-mail address

First price mentioned is for courses in the Netherlands, second price mentioned is for courses in Denmark, France, Germany, Italy, Sweden and UK. A registration fee of €122 is charged for each booking. If more than one course is booked at the same time, only one administrative fee of €122 will be charged. All prices are exclusive of 21% VAT. No VAT will be charged if a VAT-number is provided on this form.

Paper A & B ☐ 4-day A & B Methodology €1.550/€1.870

Date:

☐ 2-day A Methodology €775/€935

☐ 2-day B Methodology €775/€935

Paper C ☐ 3-day C Methodology €1.160/€1.430

Date:

☐ 2-day C Guided Course €1.050/€1.270

☐ 5-day C Full Preparation: 3-day Methodology and 2-day Guided Exam €2.600

Paper D ☐ 3-day D (DI – DII) Methodology €1.160/€1.430

☐ English

☐ German

Date:

☐ 2-day D (DI – DII) Guided Course €1.100/€1.320

☐ 5-day D Full Preparation: 3-day Methodology and 2-day Guided Exam €2.650

☐ 4-day D Guided Trial Run €1.550/€1.870

☐ English

☐ German

☐ 5-day D Guided Trial Run (incl. D Methodology crash) €1.940/€2.310 ☐ English ☐ German

Paper A & B ☐ 4-day A & B Methodology €1.550/€1.870

Date:

☐ 2-day A Methodology €775/€935

☐ 2-day B Methodology €775/€935

Cancellation policy: please check our website for our cancellation policy